

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

685

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,217

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

United States Court of Appeals
for the District of Columbia Circuit

No. 20,415

FILED MAR 10 1967

RUSSELL-NEWMAN MANUFACTURING CO., INC.,
Petitioner,

Nathan J. Paulson
CLERK

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,
and

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,
Intervenor.

On Petition to Review and Set Aside
and On Cross-Petition to Enforce an Order of the
National Labor Relations Board

United States Court of Appeals

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Intervenor.

On Petition to Review and Set Aside and On Cross-Petition
to Enforce an Order of the National Labor Relations Board

JOINT APPENDIX

(i)

INDEX

	<u>Page</u>
Petition for Review	1
Answer of the National Labor Relations Board to Petition to Review of Its Order	4
Petition to Review and Set Aside the Order of the National Labor Relations Board	5
Order dated June 9, 1966	7
Amended Answer of the National Labor Relations Board to Petition to Review, and Cross-Petition to Enforce an Order of the Board	8
Prehearing Conference Stipulation	9
Order Granting Motion for Consolidation	11
Prehearing Order	12
Order Granting Motion for Leave to Intervene	12
Petition dated June 19, 1964	14
Decision and Direction of Election	15
Request for Review	18
Teletype Message dated 8/25/64 from John C. Truesdale	24
Decision on Review	24
Notice of Election	26
Tally of Ballots	28
Certification on Conduct of Election	29
Employer's Objections to Conduct Affecting the Results of Election	30
Letter from the International Ladies Garment Workers Union dated January 23, 1965 "Dear Friend"	36
Newsletter - Election Final	37
Exhibit "B" - Flyer	40
Exhibit "C" - "Vote Yes Today"	41
Letter from Union Election Committee	42
Exhibit "D" - Newspaper clippings	43

(ii)

	<u>Page</u>
Supplemental Decision and Certification of Representative	44
Exhibit E — Newspaper clippings	49
Request for Review	50
Teletype Message dated 3/26/65 from Howard W. Kleebe	58
Application for Subpoena Duces Tecum to: The Honorable Regional Director, Sixteenth Region	59
Application for Subpoena Duces Tecum (John Vickers)	61
Affidavit of Vincent G. Meyer dated June 7, 1965	62
Notice of Taking Depositions on Written Interrogatories, (Hon. Elmer Davis)	63
Interrogatories	64
Transcript of Proceedings, September 27, 1965	66

Witnesses:

Tr. Page

Werner Friedman		
Direct	27	82
Cross	40	90
Redirect	40	91
John Vickers		
Direct	41	91
David R. Richards		
Direct	81	117
John Vickers		
Direct (Cont'd.)	85	119
Cross	94	125
Redirect	104	131
Recross	111	136
Further Redirect	113	137
Frank Martino		
Direct	133	150
Cross	145	158

<u>General Counsel's Exhibits:</u>		<u>Page</u>
1(a) —	Charge Against Employer	163
1(c) —	Complaint and Notice of Hearing	164
1(e) —	Respondent's Original Answer	171
1(f) —	Motion to Strike Portions of Respondent's Answer to Complaint and Motion for Judgment on the Pleadings	176
	Exhibit 9 — Letter dated March 5, 1965	183
	Exhibit 10 — Letter dated March 10, 1965	184
	Exhibit 11 — Letter dated March 23, 1965	185
	Exhibit 13 — Letter dated March 29, 1965	187
	Exhibit 14 — Letter dated April 1, 1965	188
	Exhibit 15 — Letter dated April 12, 1965	189
1(g) —	Order Referring Motions to Trial Examiner for Ruling	190
1(i) —	Request for Admissions to: The Hon. Elmer Davis	191
1(j) —	Motion of Discovery (Hon. Elmer Davis)	198
	Affidavit of George C. Dunlap	199
1(k) —	Motion of Discovery (International Ladies' Garment Workers' Union, AFL-CIO)	201
	Affidavit of George C. Dunlap	203
1(l) —	Application to Take Oral Deposition (Carlos Gonzales, Laredo Mfg. Co.)	205
1(m) —	Motion to Strike Respondent's Request for Admissions and Deny Respondent's Motions for Discovery	206
1(n) —	Order Referring Motion to Trial Examiner for Ruling	209
1(p) —	Order Denying Application to Take Oral Deposition	210
1(r) —	Order to Show Cause	210-A
1(s) —	Opinion Accompanying Order to Show Cause	211

<u>General Counsel's Exhibits (Cont'd):</u>		<u>Page</u>
1(t) —	Notice of Taking Depositions on Written Interrogatories (John Vickers)	212
	Interrogatories	213
1(u) —	Notice of Taking Depositions on Written Interrogatories (Hon. Elmer Davis)	214
	Interrogatories	214
1(v) —	Motion to Strike Respondents' Notices of Taking Depositions on Written Interrogatories	216
1(w) —	Order Referring Motion to Trial Examiner for Ruling	218
1(z) —	Response to Request for Admissions	219
1(aa) —	Motion for an Order Providing Specific Relief	220
	Exhibit A — Letter dated May 17, 1965	223
	Exhibit B — Letter dated May 19, 1965	225
	Exhibit C — Trial Examiner's Decision, April 22, 1965	226
	Exhibit J — Letter dated April 12, 1965	240
1(bb) —	Order Referring Motion to Trial Examiner for Ruling	241
1(ee) —	Respondent's Offer of Proof	242
1(ff) —	Teletype Message Denying General Counsel's Motion for Summary Judgment	268
1(hh) —	Order Rescheduling Hearing	269
1(mm) —	Teletype Message Denying General Counsel's Request for Special Permission to Appeal Trial Examiners Ruling Denying Motion for Judgment on the Pleadings	270
2(a) —	Petition to Revoke Subpena (Russell-Newman)	271
2(b) —	Petition to Revoke Subpena Duces Tecum (Hon. Elmer Davis)	272
	Subpena Duces Tecum To: The Hon. Elmer Davis	274

(v)

General Counsel's Exhibits (Cont'd.):

Page

2(c) —	Order Referring Petitions to Revoke Subpena Duces Tecum to Trial Examiner for Ruling	275
2(e) —	Petition to Revoke Subpoena (John Vickers)	275
	Ex. A — Subpena Duces Tecum	277
2(h) —	Response to Petition to Revoke Subpena re Bill Klein	278
2(j) —	Letter from Ligarde, Garcia, Wilson & Gutierrez to Hon. John H. Fanning, NLRB, dated June 8, 1965	280
	Motion to Revoke a Subpoena Duces Tecum, (Honore Ligarde)	281
	Ex. A — Subpena Duces Tecum	284
2(k) —	Order Referring Motion to Revoke a Subpoena Duces Tecum to Trial Examiner for Ruling	285
2(m) —	Response to Petition to Revoke Subpena re Vickers	285
	Ex. A — Post Office Dept. Receipt	287
2(n) —	Response to Petition to Revoke Subpena Duces Tecum re Davis	288
2(o) —	Subpena Duces Tecum (Bill Klein)	291
2(p) —	Letter from Lyne, Blanchette, Smith & Shelton to Hon. Elmer Davis, NLRB, dated June 11, 1965	292
2(q) —	Letter from Leon D. Miller to NLRB, dated June 10, 1965	293
2(r) —	Order Referring Documents to Revoke Subpoena Duces Tecum to Trial Examiner for Ruling	294
2(t) —	Motion to Revoke a Subpoena Duces Tecum (Carlos Gonzales)	295
	Subpena Duces Tecum	297
2(u) —	Order Referring Motion to Revoke Subpoena Duces Tecum to Trial Examiner for Ruling	298
2(w) —	Order Revoking Subpenas	299

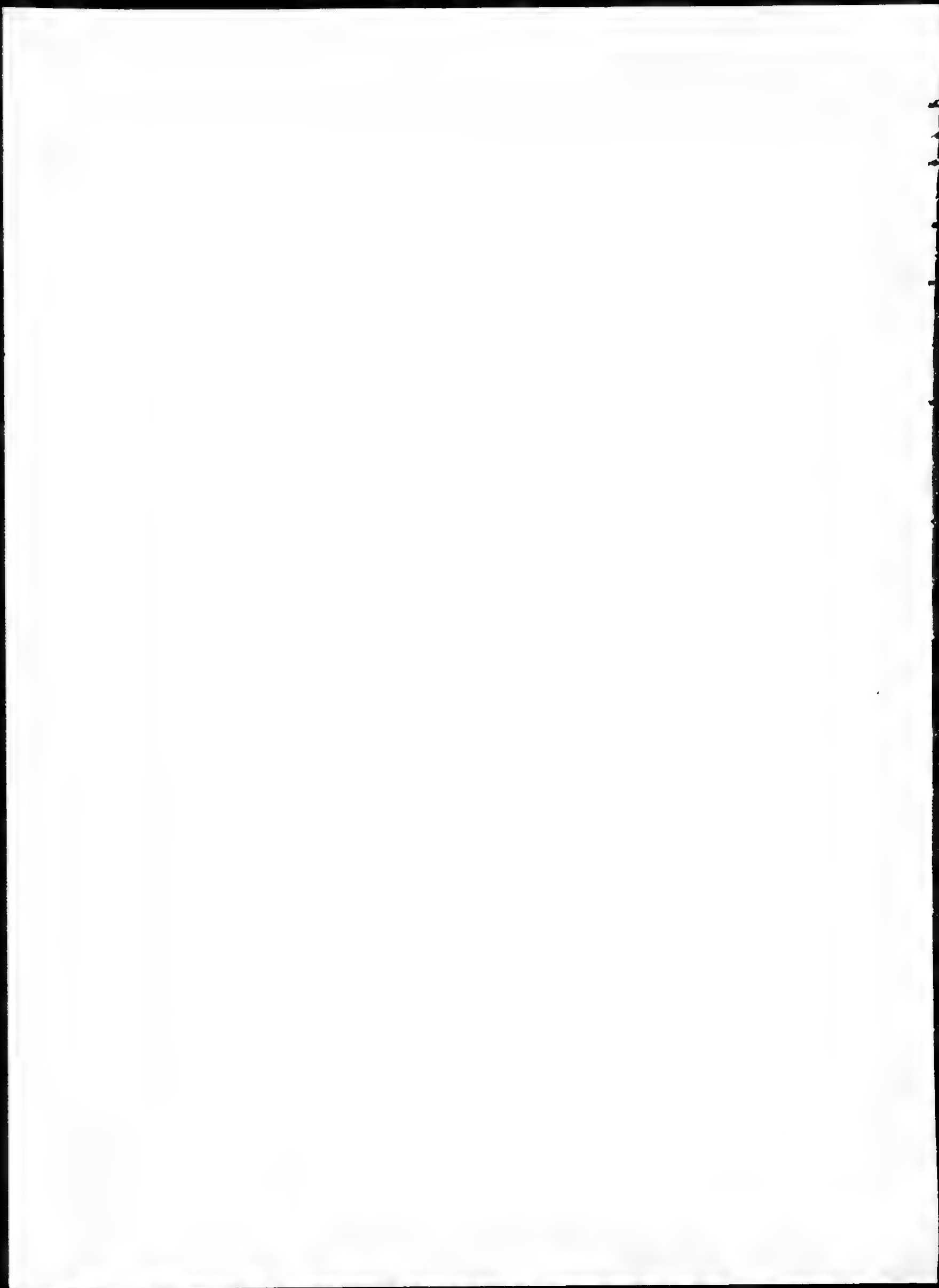
General Counsel's Exhibits (Cont'd.):Page

3 and 4 -	299
5 -	299
6 and 7 -	300
8 and 9 -	300
10 -	300
11 -	300
12 -	300
13 - Letter from Mullinax, Wells, Morris & Mauzy to Russell-Newman Mfg. Co., dated May 17, 1965	301
14 - Letter from Lyne, Blanchette, Smith & Shelton to Mr. David R. Richards, dated May 19, 1965	304

Respondent's Exhibits:

1 -	305
2 -	305
3 -	305
4 - Agreement (Excerpts)	306
5 - 1965 Agreement - Nardis Sportswear, Inc. with Texas District Council, ILGWU (Excerpts)	314
6 - Agreement - (Excerpts)	323
7 - Agreement - Laredo Mfg. Co., Inc. with Texas District Council of the International Ladies' Garment Workers' Union, AFL-CIO (Excerpts)	326
Schedule A	328
8 - Articles of Agreement between Kabro of Houston, Inc. - The International Ladies' Garment Workers, Union, AFL-CIO and Its Local No. 214 (Excerpts)	329
9 - Agreement - Kabro of Houston, Inc. with Texas District Council of the International Ladies' Garment Workers' Union (Excerpts)	332
Schedule A	334

<u>Respondent's Exhibits (Cont'd.):</u>	<u>Page</u>
10 — Agreement (Excerpts)	337
12 —	344
15 — Response to Petition to Revoke Subpoena Duces Tecum re: Bishins	344
Exhibit A — Post Office Receipt	346
17 — Subpena Duces Tecum (Herman L. Bishins)	347
18 — Subpena Duces Tecum (Carlos Gonzalez)	348
19 — Subpena Duces Tecum (Bill Klein)	349
20 — Subpena Duces Tecum (Honore Ligarde)	350
21 — Subpena Duces Tecum (Hon. Elmer Davis)	351
22 — Request for Admissions to: International Ladies' Garment Workers' Union	352
Trial Examiner's Decision, December 7, 1965	359
Decision and Order, June 1, 1966	373
Appendix — Notice to All Employees	383



JOINT APPENDIX

[Filed June 3, 1966]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

Case No. 20,217

PETITION TO REVIEW

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT:

This is a Petition to Review and set aside a final order of the National Labor Relations Board (hereinafter called the "Board"). On June 1, 1966, the Board entered a final order by which your petitioner is aggrieved and its interests adversely affected in a proceeding appearing and designated on the records of the Board as Russell-Newman Manufacturing Company, Inc. and International Ladies' Garment Workers' Union, AFL-CIO, Case No. 16-CA-2318.

In support of this petition, your petitioner respectfully shows to this Court:

1. Petitioner, International Ladies' Garment Workers' Union, AFL-CIO, is an international labor organization and a voluntary, unincorporated association, chartered to organize and represent employees in collective bargaining.

2. In the final Decision and Order, hereinabove referred to, the Board concluded that Russell-Newman Manufacturing Co., Inc., hereinafter referred to as "respondent" below, had not committed certain unfair labor practices in violation of Section 8(a)(1) and (5) of the Labor Management Relations Act, as amended.

3. This Court, in the foregoing circumstances, has jurisdiction of this action and the parties hereto under the provisions of Section 10(f) of the Labor Management Relations Act of 1947, as amended, 61 Stat 136, 29 USC Sec. 151, et seq., hereinafter called "the Act."

**NATURE OF THE PROCEEDINGS AS TO
WHICH REVIEW IS SOUGHT**

4. The nature of the proceedings as to which review is sought is as follows:

Upon an original unfair labor practice charged filed on April 16, 1965, by petitioner against Russell-Newman Manufacturing Co., Inc., the General Counsel of the National Labor Relations Board issued a complaint alleging that Russell-Newman Manufacturing had engaged in certain unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.

The complaint alleged in substance that Russell-Newman Manufacturing Company had refused to bargain collectively with petitioner as the exclusive bargaining representative of its employees in a bargaining unit appropriate for the purposes of bargaining.

Pursuant to notice, a hearing was held before the Honorable Frederick U. Reel, a Trial Examiner, at Denton, Texas, on September 27th, 1965. On December 7, 1965, Trial Examiner Reel issued his Intermediate Report finding that respondent below had not engaged in the alleged unfair labor practices and recommending that the complaint be dismissed in its entirety.

Thereafter, the General Counsel of the NLRB and petitioner filed exceptions to the Intermediate Report and briefs in support of their exceptions.

On June 1, 1966, the Board issued its Decision and Order, finding that Russell-Newman had engaged in certain conduct violative of the Act but failing to find that certain other conduct alleged to be violative of the Act was in fact an unfair labor practice, and denying to petitioner certain specific items of relief for which it had prayed.

GROUND ON WHICH RELIEF IS SOUGHT

The petitioner respectfully submits that the Board erred to the extent that it failed to require the respondent to cease and desist from all unfair labor practices as alleged by petitioner and to take all affirmative action which petitioner sought as necessary to remedy the unfair labor practices, and to that extent the Order of the Board is unsupported by substantial evidence on the record considered as a whole, and is contrary to law.

THE RELIEF PRAYED

In view of the foregoing, the petitioner prays:

(1) That a certified copy hereof be forthwith served according to law upon the respondent, National Labor Relations Board, and respondent Russell-Newman Manufacturing Co., Inc., and that the respondent, National Labor Relations Board, be required in conformity with the law to certify to the Court a transcript of the record of the proceedings wherein said Order was entered, including the pleadings, record and the Decision and Order of the National Labor Relations Board.

(2) That to the extent that the relief sought by the petitioner was denied by the Board said proceedings, findings, conclusions and Decision and Order be set aside, vacated and annulled, and that this Court enter an appropriate Decree providing for all the relief sought by petitioner.

(3) That this Court exercise its jurisdiction and grant petitioner such other and further relief in the premises as the rights and equities of the cause may require and to the Court may seem just and proper.

Respectfully submitted,

/s/David R. Richards
1601 National Bankers Life Bldg.
Dallas, Texas 75201

Counsel for Petitioner

[Certificate of Service]

**ANSWER OF THE NATIONAL LABOR RELATIONS BOARD
TO PETITION TO REVIEW OF ITS ORDER**

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board files this Answer to the Petition for Review of an Order issued on June 1, 1966, against Russell-Newman Manufacturing Company, Inc., in a proceeding designated on the records of the Board as Case No. 16-CA-2318.

(1) In Answer to the allegations in paragraphs numbered 1, 2 and 3 of the Petition to Review, the Board admits that the Court has jurisdiction, and in further answer to the paragraph numbered 2, and in answer to the paragraph numbered 4, the Board prays reference to the proceedings had before it in Board Cases Nos. 16-RC-3716 and 16-CA-2318.

(2) In answer to the paragraph of the Petition to Review entitled "GROUNDS ON WHICH RELIEF IS SOUGHT," the Board denies each and every allegation of error set forth therein.

3. In answer to the request contained in paragraph (1) of the prayer for relief, the Board will file with the Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceedings before the Board pursuant to Rule 38(g) of this Court and Section 10(e) and 10(f) of the Act.

4. With respect to paragraphs (2) and (3) of the prayer for relief, the Board requests that such prayers be denied.

WHEREFORE, the Board prays that the Court cause notice of the filing of this Answer to be served on petitioner, and that this Court enter a decree denying the Petition to Review.

/s/Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D.C.
this day of June, 1966.

[Filed June 9, 1966]

**PETITION TO REVIEW AND SET ASIDE THE ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

TO THE SAID HONORABLE COURT:

Now comes RUSSELL-NEWMAN MANUFACTURING CO., INC., hereinafter called Petitioner, pursuant to Section 10(f) of the Labor Management Relations Act, 1947, (Public Law No. 101, 80th Congress, Chapter 120, 1st Session) as amended, and complains of the National Labor Relations Board, hereinafter called Respondent, and for grounds of such complaint would show the Court the following:

I.

That heretofore on June 1, 1966 the Respondent issued its Decision and Order in Case No. 16-CA-2318 such case entitled Russell-Newman Manufacturing Co., Inc., and International Ladies' Garment Workers' Union, AFL-CIO, a copy of such Decision and Order being attached to this petition, marked Exhibit "A", and made a part hereof for all purposes.

II.

The said Decision and Order, orders and directs this Petitioner to cease and desist from refusing to bargain collectively in good faith with the International Ladies' Garment Workers' Union, AFL-CIO concerning wages, hours, and other terms and conditions of employment of the employees of this Petitioner, and to take other remedial action.

III.

That the said Decision and Order of Respondent is erroneous as a matter of law and is not supported by substantial evidence on the record as a whole.

IV.

That Respondent, in said matter, has been denied due process of law as provided and guaranteed by the Administrative Procedure Act, Public Law No. 404, 79th Congress, Chapter 324, 2nd Session, the Labor Management Relations Act, 1947, Public Law No. 101, 80th Congress, Chapter 120, 1st Session, as amended and the United States Constitution.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that the Respondent be given due notice of the filing of this petition pursuant to Section 10(f) of the Labor Management Relations Act, 1947, Public Law No. 101, 80th Congress, Chapter 120, 1st Session, as amended, and that upon final hearing hereof the said Decision and Order of the National Labor Relations Board be in all things set aside and held of no force and effect, and for such other and further relief to which Petitioner may be justly entitled.

Respectfully submitted,
LYNE, KLEIN & FRENCH
By: /s/ Fritz L. Lyne

16th Floor, Adolphus Tower
Dallas, Texas 75202

[Filed June 9, 1966]

A Petition for Review of an Order of the National Labor Relations Board made on June 1, 1966, in the proceeding known upon the records of the Board as Case No. 16-CA-2318, having been presented to the Court;

IT IS ORDERED that said Petition be filed and docketed as of June 9, 1966; and

IT IS FURTHER ORDERED that a copy of this order and said Petition be forthwith served on the National Labor Relations Board, and that said Board, upon service of such copies, forthwith certify and file in this Court, a transcript of proceedings, or in lieu thereof, a certified list of all documents, transcripts of testimony, exhibits and other material comprising the record of the proceedings before the National Labor Relations Board, in the above entitled matter, within forty days (40) from this date as required by Rule 38, as amended.

EDWARD W. WADSWORTH,
Clerk of the United States Court
of Appeals for the Fifth Circuit.

By: /s/ G. F. Ganucheau
Chief Deputy Clerk
FOR THE COURT BY DIRECTION

June 9, 1966
New Orleans, Louisiana

[Filed August 30, 1966]

**AMENDED ANSWER OF THE NATIONAL LABOR RELATIONS
BOARD TO PETITION TO REVIEW, AND CROSS-PETITION
TO ENFORCE AN ORDER OF THE BOARD**

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board, files the following amended answer to the petition for review, transferred to this Court from the United States Court of Appeals for the Fifth Circuit, and files its cross-petition for enforcement of the Board order issued against petitioner on June 1, 1966.

1. With respect to the allegations of the petition contained in paragraphs I and II, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board, filed in Case No. 20217, on this Court's docket, for a full and exact statement of the pleadings, evidence, rulings and decision and order of the Board, and all other proceedings had in said matter.

2. The Board admits the factual allegations set forth in the section of the petition concerning the jurisdiction of this Court, but, with regard to the allegation of venue, the Board prays reference to the Order of the Fifth Circuit, dated August 17, 1966, transferring the instant proceeding to this Court. The Board avers that this Court has jurisdiction under Section 10(e) and (f) of the National Labor Relations Act, as amended.

3. The Board denies each and every assignment of error contained in paragraphs III and IV of the petition.

4. Further answering the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act, and respectfully requests this Court to enforce the order of the Board issued against petitioner herein in the Case designated on the records of the Board as Case No. 16-CA-2318.

WHEREFORE, the Board prays that the Court cause notice of the filing of this amended answer and cross-petition for enforcement to be served on petitioner and, if it retains jurisdiction of the aforesaid proceedings, that this Court enter a decree denying the petition for review and enforcing the Board's order in full.

/s/Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.
this 30th day of August, 1966.

[Certificate of Service]

[Filed September 14, 1966]

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the approval of the Court, and subject to the motions of Petitioner Russell-Newman Manufacturing Co., Inc. contesting the jurisdiction and/or venue of this Honorable Court, and the motion requesting that the Petitioner's suit in Cause No. 20,217 be dismissed as frivolous and the motion that this cause be transferred to the Court of Appeals for the Fifth Circuit, hereby stipulate as follows with respect to the issues, the procedures, and the filing of a joint appendix here.

I. THE ISSUES

A. The parties in Cause No. 20,217, to-wit INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO, Petitioner, and the NATIONAL LABOR RELATIONS BOARD, Respondent, stipulate that the issue in Cause No. 20,217 is:

Whether the Board erred in failing to order the company to refrain from refusing to bargain in any other manner, and failing to include in its order the items of relief sought by charging party as specific relief.

B. The parties in Cause No. 20,415, to-wit RUSSELL-NEWMAN MANUFACTURING CO., INC., Petitioner vs. NATIONAL LABOR RELATIONS BOARD, Respondent, stipulate that the issue in Cause No. 20,415 is:

Whether the Board properly certified International Ladies' Garment Workers' Union, AFL-CIO, as the collective bargaining representative of Petitioner's employees.

II. THE JOINT APPENDIX

1. The record in this case shall be reduced to a joint appendix to be comprised of the materials each party may designate, and each party will pay the printer directly for its share of the printing cost and mailing expenses. The Union shall include in its designation the Board's Decision and Order, the Trial Examiner's Decision, this stipulation and the Court's order thereon.

2. The Board shall have responsibility for printing the joint appendix and filing it with the Court.

3. Forty (40) copies of the appendix shall be printed under this stipulation; the required number of copies to be filed with the Court and the remaining copies to be divided equally among the parties to the stipulation.

4. It is further agreed that any party or the Court, at or following the hearing in this case, may refer to any portion of the original transcript of record or exhibits herein which has not been printed, to the same extent and effect as if they had been printed, or otherwise, reproduced, it being understood that any portion of the record thus referred to will be printed in a supplemental joint appendix if the Court so directs.

III. MOTIONS RELATING TO THE JURISDICTION AND/OR VENUE OF THE CASE

Russell-Newman Manufacturing Co., Inc., reserves the right to move this Court to dismiss the proceeding in Case No. 20,217 and to transfer the proceeding in Case No. 20,415 to the United States Court of Appeals for the Fifth Circuit.

Dated at Washington, D.C. /s/Marcel Mallet-Prevost
this 31st day of August, 1966. Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Dallas, Texas /s/David R. Richards
September 14, 1966. Counsel for International
Ladies' Garment Workers'
Union, AFL-CIO

Dated at Dallas, Texas /s/Fritz Lyne
this 17th day of September, Counsel for Russell-Newman
1966. Manufacturing Co., Inc.,

[Filed September 22, 1966]

Before: Bazelon, Chief Judge,
in Chambers.

ORDER

On consideration of respondent's motion to consolidate the above-entitled cases on the ground that the facts involved in the two cases are identical, and only one decision and order has been entered on a single record before the Board, it is

ORDERED that the motion be granted, and the above-entitled cases are consolidated for the purpose of briefs, joint appendix and hearing.

[Filed October 14, 1966]

Before: Tamm, Circuit Judge,
in Chambers.

PREHEARING ORDER

Counsel for the parties in the above-entitled cases having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

[Filed November 30, 1966]

Before: Bazelon, Chief Judge, and Fahy and Wright,
Circuit Judges, in Chambers.

ORDER

On consideration of (1) the motion of International Ladies' Garment Workers' Union, AFL-CIO for leave to intervene in this case; (2) of the motions of petitioner to dismiss this case for lack of jurisdiction or alternatively to transfer this case to the United States Court of Appeals for the Fifth Circuit and of respondent's pleadings filed with respect thereto; and (3) the motion of the National Labor Relations Board for leave to file an amended answer and cross-petition for enforcement in this case and petitioner's opposition thereto, it is

ORDERED by the court that the aforesaid motion for leave to intervene be granted and said movant is allowed to intervene in this case and the Clerk is directed to file intervenor's lodged pleading in this case, and it is

FURTHER ORDERED by the court that petitioner's motions to dismiss or transfer be denied, and it is

FURTHER ORDERED by the court that the Board's motions for leave to file an amended answer and cross-petition for enforcement are granted and the Clerk is directed to file the Board's lodged amended answer and cross-petition for enforcement.

Per Curiam

COPY

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO.

16-80-3716

DATE FILED

June 19, 1964

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering them accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. Purpose of this Petition (Check only the one box which is appropriate)

- A. ☐ RC—CERTIFICATION OF REPRESENTATIVES (INDIVIDUAL, GROUP, LABOR ORGANIZATION).—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to section 9 (a) and (c) of the act.^{*}
- B. ☐ RM—REPRESENTATION (EMPLOYER).—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in section 9(a) of the act.^{*}
- C. ☐ RD—DECERTIFICATION.—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in section 9(a) of the act.^{*}
- D. ☐ UD—WITHDRAWAL OF UNION SHOP AUTHORITY.—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be recorded.

*NOTE.—If a charge under section 8(b)(7) of the act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.

2. NAME OF EMPLOYER

Specialty Manufacturing Co., Inc.

EMPLOYEE REPRESENTATIVE TO CONTACT

Frank Martine

PHONE NO.

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code)

Boston, Texas

4a. TYPE OF ESTABLISHMENT (Factory, store, wholesaler, etc.)

Factory

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

Lingerie and slacks

5. Description of Unit Involved (If more space is needed, continue on another sheet)

Included

All production and maintenance employees at the employer's
Boston, Texas plant.

6a. NUMBER OF EMPLOYEES IN UNIT

Approx 250

Excluded

Managers, office-clericals, guards and supervisors, as
defined in the Act.

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?

☒ YES ☐ NO

(If you have checked box RC in 1.A. above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. ☐ Request for recognition as Bargaining Representative was made on June 15, 1964 and Employer
declined recognition on or about no reply received (If no reply received, so state)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME

None

APPROPRIATE

ADDRESS

DATE OF RECOGNITION OR CERTIFICATION

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)

None

10. IF YOU HAVE CHECKED BOX UD IN 1.B. ABOVE, SHOW HERE THE DATE OF REVISION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A DISPUTE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED?

YES ☐ NO ☒

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE ENGAGED THEREIN?

11c. THE EMPLOYEE HAS BEEN PICKETED BY OR ON BEHALF OF _____, A LABOR

ORGANIZATION OF _____

(Insert address)

SINCE _____

(Show month, day, and year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c, WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (If none, so state.)

NAME	APPROPRIATE	ADDRESS	DATE OF CLAIM (Required only if Petitioner is filed by Employer)
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

International Ladies' Garment Workers' Union, AFL-CIO

(Petitioner and signature, if any)

By /s/ David E. Richards

Attorney

David E. Richards

Millman, Wells, Harris & Henry

1001 East 12th Avenue, Suite 1000, Denver, Colorado 80202

(Type, if not)

1001 East 12th Avenue, Suite 1000, Denver, Colorado 80202

(Telephone number)

WARNING: FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

[Filed August 7, 1964]

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RUSSELL-NEWMAN MANUFACTURING COMPANY, INC.

Employer ^{1/}

INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO

Petitioner

CASE NO. 16-RC-3714

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case^{2/} the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.^{3/}

All production and maintenance employees at the Employer's Denton, Texas, plants, excluding designers, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place

set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether (or not) they desire to be represented for collective-bargaining purposes by

International Ladies' Garment Workers' Union, AFL-CIO.

Dated August 7, 1964
at Fort Worth, Texas

/s/ Elmer Davis
Regional Director for the 16th Region.

1/ The name of the Employer appears as corrected at the hearing.

2/ The Employer's motion to make certain corrections in the stenographic record appears to be in order and the record may stand so corrected. After the close of the hearing the Employer moved to be received in evidence as Employer's Exhibit 5, a copy of a piece of union literature bearing the date of July 31, 1964; as Employer's Exhibit 6, a copy of a letter addressed to the Employees at Pilot Point dated July 23, 1964; and as Employer's Exhibit 7, copy of a telegram dated July 31, 1964, addressed to the Employer concerning the appointment of a union organizing committee at Pilot Point. Since the Petitioner has indicated that it has no objection, Employer's Exhibits 5, 6, and 7 are received in evidence and made a part of the record.

3/ The parties are in general agreement as to the composition of the unit. The Petitioner seeks to represent the employees of the plants at Denton consisting of 35 employees in the main building who have some warehouse duties in two other buildings and 195 employees of the Denton sewing plant. To this unit, the Employer would add the 180 employees of the Pilot Point sewing plant. In the alternative, the Petitioner would accept separate units of the two groups of employees in Denton.

The Employer is engaged in the manufacture of brassieres and ladies' lingerie at Denton and Pilot Point, Texas. On or about January 1, 1964, the two sewing plants were merged under the Employer's name. Previous to that, they were operated as separate corporate entities, although commonly owned and managed. The

Employer's office is located in the main building in Denton where office and administrative matters and general supervision of both sewing plants are handled, including sales, purchases, cutting, packaging, shipping, major warehousing, and one automatic trim sewing operation. There are two separate buildings in Denton used for warehouse purposes. The Denton sewing plant is located a block and a half from the main building. The Pilot Point sewing plant is located in six adjacent buildings in Pilot Point, a distance of 18.8 miles from Denton. All plants have common labor relations policy and working conditions as to wages, promotions, holidays, vacations, insurance plans, etc. The employees at both sewing plants possess similar skills. They live in the predominantly agricultural area surrounding their plants. Through its Denton office, the workload between the two sewing plants is balanced by shifting work from one plant to the other as required. However, the Pilot Point sewing plant makes a specific item of lingerie not made at the Denton sewing plant. New employees are interviewed and tested by the Texas Employment Commission office in Denton and referred to the Denton office for further personnel processing. The actual hiring is left to the manager or assistant manager of each sewing plant. Employee seniority between the two plants has not been integrated since the corporate merger. In the past six months, only one employee transferred with her seniority from the Pilot Point plant to the Denton plant by consent of both plant managers. Each plant manager, operating under general production schedules set by the Denton office, is in charge of day-to-day operations, including promotions, discipline, and maintenance of individual personnel records and production records. There are three separate groups of mechanics stationed at the main building in Denton, the Denton sewing plant, and the Pilot Point sewing plant. They are temporarily used away from their home plants on an unscheduled basis as needed.

Since each sewing plant is separately supervised, hires its own employees, has separate employee seniority rosters, has non-integrated production lines, is geographically apart some 18 miles, has a minimal of employee transfers, we reject the Employer's contention that any appropriate unit should include both sewing plants in the absence of any collective bargaining history in support thereof and of any union seeking to represent the employees of both sewing plants. Sav-on Drugs, 138 NLRB 1032; Dixie Belle Mills, 139 NLRB 629; Hot Shoppes, 139 NLRB 1253 1253; The Black and Decker Manufacturing Company, 147 NLRB No. 101. The fact that the Petitioner is currently conducting an organizing campaign at the Pilot Point sewing plant does not alter any of the conclusions reached herein. P. Ballantine & Sons, 141 NLRB 1103, 1106-1107.

In the garment industry, the Board has taken the position that the appropriate unit is a production and maintenance unit. Dove Manufacturing Company, 128 NLRB 778. The employees in the main building at Denton and in the Denton sewing plant work in close approximation, they share the same working conditions, hours of employment and community of interest; and their joint operations fulfill the functions of the production and maintenance unit held appropriate by the Board. But see Black and Decker Manufacturing Co., *supra*. Therefore, we find that the employees in the Denton plants constitute an appropriate unit. That the parties stipulated substantially to the same unit found herein to be appropriate in Case No. 16-RC-2736 and that the Board approved the stipulation by its decision of July 25, 1960, have not been given any weight in arriving at the present unit decision.

As to the unit placement of Mr. Milner, assistant engineer, and Mr. Stinton, the head mechanic, since the record is incomplete as to their duties, they may each vote a challenged ballot.

[Filed August 13, 1964]

REQUEST FOR REVIEW

TO THE HONORABLE NATIONAL LABOR RELATIONS BOARD:

Russell-Newman Manufacturing Co., Inc., Employer in the above numbered and captioned case, makes this its formal Request for Review, pursuant to Section 102.67 of the Rules and Regulations and Statements of Procedure, Series 8, as amended, of the National Labor Relations Board.

GENERAL STATEMENT

This is a representation case. On July 20, 1964, a formal hearing was held in the above matter. The Petitioner has petitioned for a bargaining unit composed of all production and maintenance employees in the Employer's Denton, Texas plants, excluding designers, office clerical, guards and supervisors as defined in the Act (Exhibits 1(a)). Employer filed a motion that the appropriate bargaining unit be found to include all production and maintenance employees at the Employer's Denton, Texas plants and the Employer's Pilot Point plant, excluding designers, office clerical, guards and supervisors, as defined in the Act (tr.p.13).

By his Decision and Direction of Election, dated August 7, 1964, the Regional Director for the Sixteenth Region ruled in favor of the petitioning union and thus excluded from the bargaining unit all of Employer's employees at Pilot Point, Texas, while including all production and maintenance employees at the Employer's Denton, Texas plants.

Employer herewith requests that this Honorable Board review the proceedings herein and make its order establishing the appropriate unit in this case as all of the Employer's production and maintenance employees at the Employer's Denton, Texas plants and at the Employer's Pilot Point, Texas plant.

STATEMENT OF EVIDENCE

Employer's operations are conducted in four separated buildings in the town of Denton, Texas (tr. p. 20) and in six adjacent buildings in the town of Pilot Point (tr. pp. 23-24). These two towns are situated 18.8

miles apart in Denton County, Texas (tr. p. 23). Two of the buildings in Denton are used as warehouses and employees are not regularly on duty therein (tr. p. 22). The principal activities of Employer are conducted at the Denton sewing plant where approximately 195 production and maintenance employees are employed (tr. p. 21), at the Denton main plant where approximately 35 production and maintenance employees are employed (tr. p. 21), and at the Pilot Point sewing plant where approximately 180 production and maintenance employees are employed (tr. p. 25). The six buildings comprising the Pilot Point sewing plant are adjacent (tr. p. 24), and are operated as rooms of a single plant (tr. p. 44). The employees that work in these plants reside in Denton, Pilot Point and various other towns in the area. Employer's Exhibit 2 shows the localities of residence of the employees in relation to the plant where they are employed. The Employer has no requirement that employees working in Pilot Point must live in or near Pilot Point, nor that employees working in Denton must live in or near Denton (tr. p. 58), but as Employer's Exhibit 2 illustrates, they frequently do not work at the plant situated nearest to their homes.

Prior to approximately January 1, 1964, the Pilot Point sewing plant was owned by two separate corporations other than Employer, to wit: Martino-Robinson Manufacturing Company, Inc. and Betti Lingerie, Inc. (tr. p. 25). On or about January 1, 1964, said two named corporations were merged into Employer, Russell-Newman Manufacturing Co., Inc. (Employer's Ex. 1), and as a result thereof, what had been three corporations became one (tr. p. 26), and the employees of the former Betti Lingerie, Inc. and the employees of the former Martino-Robinson Manufacturing Company, Inc. became the employees of Russell-Newman Manufacturing Company, Inc. (tr. p. 27). Although prior to merger the three corporations had some directors in common (tr. p. 106), the ownership of stock in the three corporations was not the same (tr. pp. 107-108). Since the merger, . . . "the employees are carried as a single group of employees uniform in equal treatment throughout." (tr. p. 34).

It is the contention of Employer that it operates one integrated enterprise and that all of its production and maintenance employees, all of whom have a community of interest, should properly be included in a single bargaining unit. All facets of Employer's operations, as set out hereinbelow, illustrate that it functions as a single, integrated production and maintenance unit.

1. Common Employment Practice. All employees for all plants are employed in the same manner. Irrespective of the location where application for employment is made, all applicants are referred to the Texas Employment Commission office in Denton where they are tested. If the applicant passes this test, she is approved for employment (tr. pp. 42-43 and 47). All reports from the Texas Employment Commission office are made to Flo Simmons at the Denton sewing plant (tr. p. 48). All personnel records for all employees are maintained at the Denton sewing plant (tr. p. 49).

2. Common Supervision. Mr. Martino is supervisor of all production employees at both Denton and Pilot Point (tr. p. 37). Mr. Robinson supervises employees in cutting and shipping (tr. p. 37).

3. Identical Starting Wage. All employees, whether at Denton or Pilot Point, have the same starting wage (tr. p. 32).

4. Identical Wage Policy. All wage increases, below the supervisor level, are based solely on seniority (i.e. an increase of \$2.00 per week is given every eight months until the maximum rate is reached) for all employees, whether at Denton or Pilot Point (tr. p. 32). One payroll officer, who is in the Denton main plant, writes the payroll for all employees at Denton and at Pilot Point (tr. p. 76-77). There is maintained but one bank account for all employees (tr. p. 78).

5. Identical Hospitalization Benefits. The Employer maintains a hospitalization plan for the benefit of its employees which is identical for all employees, whether employed in Denton or Pilot Point (tr. p. 33).

6. Identical Holidays. All Employees, whether at Denton or Pilot Point, receive the same paid holidays and the same unpaid holidays (tr. p. 33).

7. Identical Vacation Plan. All employees, whether at Denton or Pilot Point, have identical vacation benefits (tr. p. 34).

8. Transfer of Employees. The Employer has a policy that employees may transfer from one plant to another, with the approval of both plant managers, without loss of seniority (tr. p. 34). Since January 1, 1964, one employee has been transferred at her request, pursuant to this policy (tr. p. 155), and one has been transferred at the direction of the Employer (tr. p. 154).

9. Transfer of Maintenance Employees. There are three maintenance employees stationed at the Denton sewing plant and four at the Pilot Point sewing plant (tr. pp. 101-102). There is a three way interchange between these employees in that they will work at the Denton sewing plant, Denton main plant or Pilot Point sewing plant, depending upon where they are needed (tr. p. 46 & 155).

10. Common Cutting Department. The cutting department situated in the Denton main plant does all cutting of piece goods for both the Denton and Pilot Point sewing plants (tr. p. 28). Neither Denton nor Pilot Point sewing plants do any cutting (tr. p. 28).

11. Common Shipping Department. The shipping department situated in the Denton main plant does the shipping of all finished goods manufactured in both the Denton and Pilot Point sewing plants (tr. p. 28).

12. Common Automatic Unit. The automatic sewing unit situated at the Denton main plant performs automatic sewing operations for both the Denton and Pilot Point sewing plants (tr. p. 31). It also performs these operations for other sewing operations conducted at the Denton main plant (tr. p. 31). These operations are performed at no other place (tr. p. 32).

13. Common Design. The same designer designs goods to be manufactured in both the Denton and the Pilot Point sewing plants (tr. p. 36).

14. Interchange of Supervisors. Most of the Employer's supervisors have been employed at one time or another in both the Denton and Pilot Point sewing plants (tr. pp. 38-42).

15. Common Purchasing. All purchasing for all plants is done from a single office, and inventory is maintained at all plants for use in all other plants (tr. pp. 50, 51 & 52); i.e., a particular item inventoried at Pilot Point would be requisitioned by Denton sewing plant or Denton main plant as needed.

16. Common Production Scheduling. On a periodic basis, a production schedule for a particular season is prepared (tr. p. 64). This production schedule is a projection of goods to be manufactured for any given future season. There is just one production schedule or work schedule for Russell-Newman Manufacturing Co., Inc. This production or work is scheduled as if all the production facilities of the company were located in a single place (tr. p. 66).

17. There Is An Interchange of Work Between All of Employer's Plants.

After a production schedule has been prepared for a given season as set out above, the work to be performed under this schedule is then divided up between the production facilities of Employer (tr. p. 64) at Denton and Pilot Point. As the year progresses, an imbalance in the work load as between plants, or even as between production units within a given plant, may well occur (tr. p. 66). These imbalances are caused by the fact that a particular line of goods don't sell as well or may sell better than it was projected to sell when the original production schedule was drawn (tr. p. 66). When such an imbalance does occur, work is shifted between production units within one plant and between plants (tr. pp. 67-75; Emp. Exh. 3). Thus, goods which are begun in Denton are shifted to Pilot Point to be completed and vice versa (tr. pp. 67-75; Emp. Exh. 3). This shift of work is in order to re-establish the balance of work so that the employees in each production unit and in each plant will be able to maintain a 40-hour work week. If this work interchange was not done, the employees at the Pilot Point plant, for example, would have to strain to maintain production while the employees at Denton went without work (tr. p. 74). In this connection, it has been the policy of the company to treat the entire manufacturing process as one single unit (tr. p. 74). Employer's Exhibit 3

graphically shows the extent to which this interchange of work has occurred between the Pilot Point sewing plant and the Denton sewing plant since January 1, 1964.

18. Same Skills. All employees of Russell-Newman Manufacturing Co., Inc., whether they work in Denton or in Pilot Point, have the same degree of skill (tr. p. 80). Thus, work can be and is freely exchanged among the various units (tr. p. 80) as pointed out above.

Since there is this equality between production units, the Employer is able to apply one uniform cost accounting system (tr. p. 80). In working out and applying this cost accounting system, no distinction is made between the Pilot Point and the Denton sewing plants. In other words, the company has combined the entire operation as a single operation (tr. p. 80).

19. Extent of Union Organizing Activity. The Petitioner has attempted to organize all of the employees of Russell-Newman Manufacturing Co., Inc. (tr. pp. 142, 143). Union literature has been mailed to the employees of Russell-Newman Manufacturing Co., Inc. both at Denton and at Pilot Point (tr. p. 142) and the union is actively working toward the organization of all the production and maintenance employees of Russell-Newman Manufacturing Co., Inc. (tr. p. 143). An example of the extent of the union organizational activity is shown in the Employer's Exhibit 4.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: /s/ Fritz L. Lyne

By: /s/ George C. Dunlap

[Certificate of Service]

TELETYPE MESSAGE

WWAL 9 NLRB

WASHINGTON DC 8-25-64 1109R

E P DAVIS DIR NLRB FT WORTH TEXAS

RE: RUSSELL-NEWMAN MANUFACTURING COMPANY, INC.,
16-RC-3714. IT IS HEREBY ORDERED THAT THE EMPLOYERS
REQUEST FOR REVIEW OF THE REGIONAL DIRECTORS DECISION
AND DIRECTION OF ELECTION BE, AND IT HEREBY IS, GRANTED.
THE ELECTION IS HEREBY STAYED PENDING DECISION ON RE-
VIEW. BY DIRECTION OF THE BOARD:

JOHN C. TRUESDALE ASSOC EXEC SECY

16-RC-3714

GEP 1117R

[Dated December 7, 1964]

DECISION ON REVIEW

On August 7, 1964, the Regional Director for the Sixteenth Region issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, the Employer, in accordance with Section 102.67 of the Board's Rules and Regulations, as amended, filed a timely request for review of the Decision on the grounds that the unit in which the election was directed, the Employer's production and maintenance employees at its Denton, Texas plant, is inappropriate, and that the appropriate unit should not only consist of the employees of said plant but also the Employer's

production and maintenance employees at its Pilot Point, Texas plant. Opposition to the request for review was filed by the Petitioner. The Board, by telegraphic Order dated August 25, 1964, granted the request for review and stayed the election pending its decision on review.

The Board^{1/} has considered the entire record in the case with respect to the Regional Director's determination under review, and hereby affirms his finding that a unit limited to the production and maintenance employees at the Employer's Denton, Texas plant is appropriate.^{2/}

Accordingly, the case is hereby remanded to the Regional Director for the Sixteenth Region for the purpose of holding an election pursuant to his Decision and Direction of Election, except that the payroll period for determining eligibility shall be that immediately preceding the date below.

Dated, Washington, D. C. December 7, 1964.

/s/ John H. Fanning
Member

Gerald A. Brown
Member

Howard Jenkins, Jr.
Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

^{1/} Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

^{2/} The Black and Decker Manufacturing Company, 147 NLRB No. 101.

UNITED STATES
NATIONAL LABOR

NOTICE OF

RIGHTS OF EMPLOYEES

Under Section 7 of the National Labor Relations Act, employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

PURPOSE OF ELECTION

An election by secret ballot will be conducted, under the supervision of the Regional Director of the National Labor Relations Board, among the eligible voters described herein, to determine the representative, if any, desired by them for the purpose of collective bargaining with their employer.

SECRET BALLOT

The election will be by SECRET ballot. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to the Regional Director or his agent in charge of the election. Your attention is called to Section 12 of the National Labor Relations Act:

ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

An agent of the Board will hand a ballot to each eligible voter at the voting place. The voter will then mark his ballot in secret in a voting booth and fold it. The voter will then personally deposit the folded ballot in a ballot box under the supervision of an agent of the Board. A majority of the valid ballots cast will determine the results of the election.

Incorporated herein, for your information only, is a copy of the official ballot.

AUTHORIZED OBSERVERS

Each of the interested parties may designate an equal number of observers, this number to be determined by the Regional Director or his agent in charge of the election. These observers will (a) act as checkers at the voting place and at the counting of ballots, (b) assist in the identification of voters, (c) challenge voters and ballots, and (d) otherwise assist the Regional Director or his agent.

ELIGIBILITY RULES

Employees described under VOTING UNIT in this Notice of Election who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off and employees in the military service of the United States who appear in person at the polls shall be eligible to vote. Also eligible are those employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period, and their replacements. Employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than 12 months prior to the date of the election and who have been permanently replaced, shall not be eligible to vote.

CHALLENGE OF VOTERS

The challenge of a voter MUST be made before the voter has deposited his ballot in the ballot box.

INFORMATION CONCERNING ELECTION

The Act provides that only one valid representation election may be held in a 12-month period. Any employee who desires to obtain any further information concerning the terms and conditions under which this election is to be held or who desires to raise any question concerning the holding of an election, the voting unit, or eligibility rules may do so by communicating with the Regional Director or his agent in charge of the election.

THIS IS THE ONLY OFFICIAL NOTICE OF THIS ELEC

OF AMERICA
RELATIONS BOARD

27

ELECTION

(16-RC-3714)

VOTING UNIT

THOSE ELIGIBLE TO VOTE:

All production and maintenance employees at the Employer's Denton, Texas, plants, who were employed during the payroll period ending August 6, 1964.

THOSE NOT ELIGIBLE TO VOTE:

Designers, office clerical employees, guards, and supervisors as defined in the Act.

TIME AND PLACE OF ELECTION

DATE: Thursday, August 27, 1964

LOCATION

HOURS

Sewing Plant 2:00 p.m. to 3:30 p.m.
Main Plant 4:00 p.m. to 4:30 p.m.

UNITED STATES OF AMERICA	
National Labor Relations Board	
OFFICIAL SECRET BALLOT	
FOR CERTAIN EMPLOYEES OF RUSSELL-NEWMAN MANUFACTURING COMPANY, INC. Denton, Texas	
Do you wish to be represented for purposes of collective bargaining by -	
INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO	
MARK AN "X" IN THE SQUARE OF YOUR CHOICE	
YES <input type="checkbox"/>	NO <input type="checkbox"/>

DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.
If you spoil this ballot return it to the Board Agent for a new one.

TION AND MUST NOT BE DEFACED BY ANYONE

FORM NLRB 760
(4-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

RUSSELL-NEWMAN MANUFACTURING COMPANY
INC.

Employer

and

INTERNATIONAL LADIES' GARMENT
WORKERS UNION, AFL-CIO

Petitioner

Case No. 16-RC-3714

Date issued January 26, 1965

Type of Election:
(Check one):

(If applicable
check either
or both):

☐ Consent Agreement

☐ Stipulation

☐ Board Direction

☒ RD Direction

☐ 8(b)(7)

☐ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters	202	
2. Void ballots	1	
3. Votes cast for		108
4. Yates & Sons		
5. Yates & Sons		
6. Votes cast against participating labor organization(s)		75
7. Valid votes counted (sum of 3, 4, 5, and 6)		183
8. Challenged ballots		6
9. Valid votes counted plus challenged ballots (sum of 7 and 8)		189
10. Challenges are <u>(not)</u> sufficient in number to affect the results of the election.		
11. A majority of the valid votes counted plus challenged ballots (Item 9) <u>has</u> <u>(not)</u> been cast for:		

PETITIONER

For the Regional Director

Irene B. Hammond
John H. Koeniger

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For. EMPLOYER

Lourence H. Simmons
Betty Harper

For. PETITIONER

Stella Rice

For.

For.

NLRB-750
(5-1-45)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CERTIFICATION ON CONDUCT OF ELECTION

Name of employer RUSSELL-NEWMAN MANUFACTURING COMPANY Case No. 16-RC-3714
INC.
Date of election January 26, 1965 Place Denton, Texas

The undersigned acted as agents of the Regional Director and as authorized observers, respectively, in the conduct of the balloting at the above time and place.

WE HEREBY CERTIFY that such balloting was fairly conducted, that all eligible voters were given an opportunity to vote their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

For RUSSELL-NEWMAN MANUFACTURING COMPANY, For the Regional Director,
INC. Sixteenth Region

Sewing Plant

Florence H. Simmons

Irene B. Hammond

John H. Koeniger

Main Plant

Betty Harper

Irene B. Hammond

John H. Koeniger

INTERNATIONAL LADIES' GARMENT
For WORKERS UNION, AFL-CIO

For

Sewing plant

Stella Rice

Main Plant

Stella Rice

UNITED STATES OF AMERICA
BEFORE THE NATIONAL RELATIONS BOARD
SIXTEENTH REGION

RUSSELL-NEWMAN MANUFACTURING CO., INC.	X	
	X	
	X	
and	X	No. 16-RC-3714
	X	
INTERNATIONAL LADIES' GARMENT WORKERS	X	
UNION, AFL-CIO	X	

EMPLOYER'S OBJECTIONS TO CONDUCT
AFFECTING THE RESULTS OF ELECTION

Comes now RUSSELL-NEWMAN MANUFACTURING CO., INC., Employer in the above styled and numbered cause, and files this its Objections with the Honorable Regional Director of the Sixteenth Region of the National Labor Relations Board to conduct affecting the results of the election held in said matter on January 26, 1965, and for cause thereof would show the following:

1. On January 23, 1965, Petitioner caused to be mailed to the employees of Employer the letter attached hereto marked Exhibit "A-1" and made a part hereof for all purposes, which letter had enclosed with it a "Newsletter" dated January 25, 1965, a copy of which is marked Exhibit "A-2", attached hereto and made a part hereof for all purposes. Exhibits "A-1" and "A-2" were not received by the employees who were eligible to vote in said election until the evening of January 25, 1965, after they returned home from work.

2. On the evening of January 25, 1965, Petitioner caused to be handed out to the employees eligible to vote in said election a handbill, a copy of which is marked Exhibit "B", attached hereto and made a part hereof for all purposes.

3. On the morning of January 26, 1965 (the day of the election), Petitioner caused to be handed out to the employees eligible to vote in said election a handbill, a copy of which is marked Exhibit "C", attached hereto and made a part hereof for all purposes.

4. The above referred to election was held at Employer's sewing plant in Denton, Texas, between the hours of 2:00 and 3:30 o'clock P. M. on January 26, 1965, and at Employer's main plant in Denton, Texas, between the hours of 4:00 and 4:30 o'clock P. M. on January 26, 1965.

5. Statements contained in the said exhibits attached hereto are material; are false and misleading (as hereinafter more specifically alleged); the mailing and distribution thereof was so timed as to prevent any replies by Employer; said statements could not be intelligently evaluated by the employees; said statements were calculated to and did in fact deceive said employees as to material facts; and they were calculated to and did have a significant impact on said election. The facts purportedly stated in said Exhibits "A-1" through "C" were peculiarly within the knowledge of Petitioner. Said Exhibits "A-1" through "C", inclusive, are alleged to be false and misleading in a number of particulars including but not limited to the following, to-wit:

(a) Exhibit "A-2" states as follows:

'In Laredo, Texas — New Union Contracts were signed providing every Union member (over 300) with a 25¢ AN HOUR WAGE INCREASE at Amedee Frocks and Laredo Mfg. Co.'

It is alleged that Laredo Mfg. Co., a manufacturer of dresses (while Employer, Russell-Newman Manufacturing Co., Inc. is a manufacturer of ladies lingerie), employs most of its workers on a piece work basis, while Russell-Newman Manufacturing Co., Inc. employs all of its employees on an hourly basis. Petitioner's contract with Laredo Mfg. Co. provides with respect to its employees on a piece work basis that commencing July 6, 1964 they will have a starting minimum rate of \$1.25 per hour which increases to \$1.35 per hour after 4 months and to \$1.40 per hour after 6 months. Said contract further provides that on September 6, 1965, the minimum starting rate will be \$1.25 per hour which will increase to \$1.40 per hour after 4 months and to \$1.50 per hour after 6 months. Said contract further provides with respect to hourly paid employees,

that they will receive compensation wage rates to \$1.40 per hour maximum, with no provision for further increases. In addition, said contract provides that the number of hours worked by said employee shall be reduced from 37 1/2 hours per week to 35 hours per week. It is submitted that the increase in pay, which is not as claimed by Petitioner, a 25¢ per hour increase, was made to compensate the reduction in working hours. Russell-Newman Manufacturing Co., Inc. has regularly provided its employees with 40 hours per week.

(b) The second page of Exhibit "C" states as follows:

"We didn't have space in our 'NEWSLETTER' to point out that * * * ; in Laredo the Union Contract provides a 25¢ an hour wage increase for Cutting Dept. employees."

It is alleged that the contract between Petitioner and Laredo Mfg. Co. in fact provides for increases effective July 6, 1964 for the Shipping Department employees from \$1.30 per hour to \$1.40 per hour and for Spreaders from \$1.25 per hour to \$1.40 per hour with no provision for further increases during 1965.

(c) Exhibit "A-2" states as follows:

"In Houston, Texas — The new Union Contract at Kabro, Inc. provides a minimum wage of \$1.60 AN HOUR and a 25¢ AN HOUR general increase for time workers. The vast majority of the more than 200 workers at Kabro earn far more than \$1.60 an hour."

It is alleged that the contract applicable to the employees of Karbo, Inc. at Houston provides that hourly workers wage rates are to escalate from \$1.25 per hour to \$1.50 per hour over a 3 year period. The minimum wage of \$1.60 per hour applies only to piece work employees. The employees at Karbo, Inc. who earn more than \$1.60 per hour are all piece work employees. None of the employees at Russell-Newman

Manufacturing Co., Inc. are now employed on a piece work basis. The 25¢ an hour increase for time workers at Karbo, Inc. at Houston was not, as implied by Petitioner, a lump sum increase, but to occur over a 3 year period.

(d) Exhibit "C" states as follows:

"We did not have space in our 'NEWSLETTER' to point out that the Karbo of Houston plant signed an agreement with the Union granting a 25¢ an hour wage increase to members in the Cutting and Shipping department; * * * "

The Shipping Department of Karbo in Houston is non-union, is not under a union contract and has never been under a union contract.

(e) Exhibit "A-2" states as follows:

"In West Helena and Lepanto, Arkansas — More than 800 Union Members at the Bobbie Brooks Company now have a new Union Contract which provides a MINIMUM WAGE OF \$1.73 AN HOUR for operators, \$3.10 AN HOUR FOR CUTTERS; \$2.05 AN HOUR FOR SPREADERS; and a 22¢ AN HOUR INCREASE for other time workers."

Such statement is misleading as shown by the article from "Women's Wear Daily" of January 4, 1965, attached hereto marked Exhibit "D" and made a part hereof for all purposes.

(f) Exhibit "A-2" states as follows:

"And in Dallas — At the start of talks for a new Union Contract the Nardis Company has already offered the Union a 15¢ an hour raise in minimum wages, more Holiday Pay; and the Company is looking favorably on granting 2 weeks paid vacation for anyone who has worked 2 years or longer. (They now have 2 wks. after 5 yrs.)"

It is alleged that Nardis Company (a dress manufacturer) and Petitioner have been negotiating on a new contract for approximately 2 months. In said negotiations Nardis did not, as stated

by Petitioner, at the "start of talk for a new union contract" * * * "offer the union a 15¢ raise in minimum wages," but to the contrary, the original offer of Nardis was a 5¢ increase for the first year of a three year contract, and a 4¢ each for the second and third years. Last week the company's offer was increased to 7 1/2¢ for the first year with 4¢ remaining for the second and third years. Also the company has not looked favorably (or unfavorably) to granting a 2 weeks paid vacation for anyone who has worked 2 years or longer. The company made an original offer of 3 weeks vacation for any employee employed over 20 years, and Petitioner countered with a demand for 2 weeks for any employee employed for over 2 years. Negotiations have proceeded no further than this.

Russell-Newman Manufacturing Co., Inc. did not have time before the election to correct the above alleged misrepresentations, and its employees were not in a position to know the truth thereof.

6. None of the concerns described in Exhibits "A-2" and "C" are competitors of Russell-Newman Manufacturing Co., Inc., and thus any wage comparisons to them are misleading in that they do not apply to comparable operations or equivalent degree of skill required for the jobs involved. It is submitted that the standard applied in Hollywood Ceramics Co., 140 N.L.R.B. No. 36, 51 L.R.R.M. 1600 (1962) should be here applied.

7. Employer has had very little time to investigate the accuracy of the statements contained in Exhibits "A-1" through "C" inclusive, and the allegations set forth in the paragraphs above are based upon the best information that could be obtained in such short period of time. It is submitted that a hearing unto this matter will verify the above allegations and probably considerable additional false and misleading statements contained in said Exhibits. It is pointed out that none of the above material was placed in the hands of the employees of Russell-Newman

Manufacturing Co., Inc. until after the employer was under the so-called 24 hour rule.

WHEREFORE, PREMISES CONSIDERED, Employer prays that the Honorable Regional Director, designate a hearing officer to take evidence regarding these objections, after due and proper notice to all parties, and that said election of January 26, 1965 be set aside and a new election be ordered.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH &
SHELTON

By: /s/ Fritz L. Lyne

By: /s/ George C. Dunlap

1100 Adolphus Tower
Dallas, Texas 75202
Telephone: RIVERSIDE 1-4871
ATTORNEYS FOR EMPLOYER,
RUSSELL-NEWMAN MANUFACTURING CO., INC.

[Certificate of Service]

TEXAS DISTRICT COUNCIL
George Lambert, Representative

Room 530, 1000 Main St., Dallas, Texas

Riverside-
2-3881

January 23, 1965

INTERNATIONAL LADIES GARMENT WORKERS UNION

Dear Friend:

Enclosed is the final Union "NEWSLETTER" you will receive before the Government holds your Secret Ballot Election on Tuesday.

Chances are by the time you get this letter, the Company will have mailed you another letter and have made you another speech asking you to vote against the Union. It is, of course, up to your good judgment as an American and as a worker in American industry to decide how you will vote.

Before you vote, consider the Companies motives in asking you to vote against the Union - so that Russell-Newman can continue to make more profits by keeping your wages low and providing you with insufficient Health and Welfare coverage and no Retirement Plan.

Consider too, that the ILGWU has contracts with thousands of other Companies in the ladies garment industry - contracts that require these Company's to pay higher wages, provide for Health-Welfare, and Retirement Plans, and many other benefits that you do not receive at Russell-Newman.

Only YOU can LOSE by taking the Companies advice to vote against the Union. Only YOU can GAIN by voting "YES" for the Union.

The Company has told you in the past that the Union's only interest in you is to get your dues and have more members. This is not true. If the Union never has a single member at Russell-Newman, it will still have over 450,000 members - and these members will keep on getting higher wages, more benefits and have a brighter future than you will at Russell-Newman without the Union. Although the Union does not need your vote, your membership, or your dues to continue as a Union, you need the assistance of the UNION to get ahead as a ladies garment worker.

The Union wants to help you make progress and have a brighter, more secure and better paid future in our industry. You can give the UNION a chance to help you have that bright future by voting "YES" on Tuesday.

Regardless of how you vote, we thank you for the courteous reception you have given Union Representatives and the members of your Election Campaign Committee as they distributed leaflets at the plant in an effort to acquaint you with the facts about the Union.

Sincerely yours,
/s/ John Vickers, Mgr.

ILGWU

DAVID DUBINSKY, President
FREDERICK SIEMS, Director
JOHN VICKERS, Manager

ELECTION FINAL

ELECTION FINAL

UNION ELECTION CAMPAIGN COMMITTEE, ILGWU

NEWSLETTER

TAKE A GOOD LOOK . . . at some of the GAINS Union Members have made in ladies' garment shops in the Southwest while you have been waiting for the Government to hold your Union Election.

During the months the Russell-Newman Company was wasting thousands of dollars on high-priced lawyers to delay your Union Election, Union members in ladies garment shops in the Southwest have been going right ahead getting new Union Contracts with higher wages and more benefits -- and there have been NO strikes to get these improvements

YES, TAKE A GOOD LOOK AT SOME OF THE MANY GOOD THINGS VOTING "YES" FOR THE UNION HAS BROUGHT GARMENT WORKERS IN SOME OF THE UNION SHOPS IN TEXAS, OKLAHOMA AND ARKANSAS -- JUST IN THE LAST FEW MONTHS.

- 1/ In Laredo, Texas -- New Union Contracts were signed providing every Union member (over 300) with a 25¢ AN HOUR WAGE INCREASE at Amedee Frocks and Laredo Mfg. Co.
- 2/ In Houston, Texas -- The new Union Contract at Kabro, Inc. provides a minimum wage of \$1.60 AN HOUR and a 25¢ AN HOUR general increase for time workers. The vast majority of the more than 200 workers at Kabro earn far more than \$1.60 an hour.
- 3/ In West Helena, and Lepant, Arkansas -- More than 800 Union Members at the Bobbie Brooks Company now have a new Union Contract which provides a MINIMUM WAGE OF \$1.73 AN HOUR for operators, \$3.10 AN HOUR FOR CUTTERS; \$2.05 AN HOUR FOR SPREADERS; and a 22¢ AN HOUR INCREASE for other time workers.
- 4/ In Bristow, Oklahoma -- On November 1, 1964, Union members at Artemis-Gossard (Remember when three of them visited your shop in Denton last Summer?) received another 5¢ an hour increase as provided for in the Union Contract they already had.
- 5/ And in Dallas -- At the start of talks for a new Union Contract, the Nardis' Company has already offered the Union a 15¢ an hour raise in minimum wages, more Holiday Pay; and the Company is looking favorably on granting 2 weeks paid vacation for anyone who has worked two years or longer. (They now have 2 wks. after 5 yrs.)

AND REMEMBER -- Union members in these shops already have many other Union benefits -- sick leave pay, hospital and surgical benefits, Union Pensions, overtime pay after 7 hours a day and 35 hours a week, severance pay, etc. -- that Russell-Newman workers do not now enjoy.

AND BEST OF ALL -- The Union was able to get all these wage increases and added benefits WITH NO STRIKES IN ANY OF THESE SHOPS.

JUST COMPARE -- These added Union wages and benefits nearly 2,000 Union members have gotten only recently in Union shops in Texas, Oklahoma and Arkansas with what you have -- and what you've gotten -- at Russell-Newman.

THINK IT OVER

Don't YOU, too, need the Union? IS THERE ANY REASON WHY YOUR "YES" VOTE FOR THE UNION WON'T BENEFIT YOU AS MUCH AS ALL THESE OTHER LADIES' GARMENT WORKERS HAVE BENEFITTED FROM VOTING "YES"?

AND REMEMBER -- Union members in these shops already have many other Union benefits -- sick leave pay, hospital and surgical benefits, Union Pensions, overtime pay after 7 hours a day and 35 hours a week, severance pay, etc. — that Russell-Newman workers do not now enjoy.

AND BEST OF ALL — The Union was able to get all these wage increases and added benefits WITH NO STRIKES IN ANY OF THESE SHOPS.

JUST COMPARE — These added Union wages and benefits nearly 2,000 Union members have gotten only recently in Union shops in Texas, Oklahoma and Arkansas with what you have — and what you've gotten -- at Russell-Newman.

THINK IT OVER

Don't YOU, too, need the Union? IS THERE ANY REASON WHY YOUR "YES" VOTE FOR THE UNION WON'T BENEFIT YOU AS MUCH AS ALL THESE OTHER LADIES' GARMENT WORKERS HAVE BENEFITTED FROM VOTING "YES"?

VOTE YES TODAY

YOUR YES VOTE



MEANS

BUT A NO VOTE



MEANS



YES

HIGHER WAGES



YES

UNION SICK LEAVE PAY



YES

RETIREMENT PAY (PENSIONS)



YES

BIGGER MEDICAL BENEFITS



YES

MORE PAID HOLIDAYS



YES

LONGER PAID VACATIONS



YES

BETTER OVERTIME PAY



YES

FAIR POINTS



YES

JOB SECURITY



YES

GRIEVANCE PROCEDURE



YES

A BRIGHTER, MORE HOPEFUL FUTURE AS A GARMENT WORKER



YES

NEARLY HALF A MILLION OF YOUR FELLOW AMERICAN LADIES

GARMENT WORKERS HAVE ALREADY

FOUND OUT THAT BY VOTING

"YES" FOR THE UNION THEY

HAVE GOTTEN ALL THESE

BENEFITS AND MORE.



NO

WAGE INCREASE



NO

SICK LEAVE PAY



NO

RETIREMENT PAY

(Rocking chairs forever???)



NO

INCREASE IN MEDICAL BENEFITS



NO

ADDITIONAL PAID HOLIDAYS



NO

PAID VACATIONS OF TWO WEEKS

OR MORE



NO

IMPROVED OVERTIME PAY



NO

FAIRER POINTS



NO

JOB SECURITY



NO

GRIEVANCE PROCEDURE



NO

REAL CHANCE FOR A BRIGHTER

FUTURE IN THE GARMENT INDUSTRY



NO

THE COMPANY IS NOT LIKELY TO

GIVE YOU THESE BENEFITS WITH-

OUT A UNION -- unless, by

some miracle, it should have

a bigger change of heart than

it ever has had and start dol-

ling out a little more to you.

AND PLEASE REMEMBER -- DO NOT SIGN YOUR BALLOT!

THE UNITED STATES GOVERNMENT GUARANTEES YOUR BALLOT, AND YOUR VOTE, WILL BE SECRET

UNLESS YOU MAKE THE MISTAKE OF SIGNING YOUR BALLOT, THERE IS NO WAY ANY OF YOUR BOSSES, NOR ANYONE ELSE, CAN EVER KNOW HOW YOU VOTE.

11/1/68

TO: Employees of Cutting and Shipping Department
FROM: Union Election Committee
SUBJECT: A special VOTE "YES" message.

A survey conducted yeaterday afternoon showed that, without question the Sewing Building employees would vote better than 2 to 1 for the Union.

We know that many of you have signed Union cards and intend to vote "YES" today. Some of you may not yet have decided to Vote "YES".

Yesterday most of you received in the mail a Union "NEWSLETTER" showing wages and wage increases Union Cutting department employees have gotten in the new Union Contract signed last month for 800 members at the Bobbie Brooks Company in nearby Arkansas. We didn't have space in our "NEWSLETTER" to point out that the Kabro of Houston plant signed an agreement with the Union granting a 25¢ an hour wage increase to the members in the Cutting and Shipping department; and in Laredo the Union Contract provides a 25¢ an hour wage increase for Cutting Dept. employees. Shipping Department employees received increases -- for example, at the Bobbie Brooks shops these increases amounted to 22¢ an hour.

The truth is that you Cutting and Shipping Department employees at Russell-Newman are even more underpaid according to your skills than the operators in the Sewing Building.

YOU HAVE MORE TO GAIN BY GOING UNION THAN ANYONE ELSE . . . YOUR "YES" VOTE WILL HELP GIVE THE UNION A BIGGER MAJORITY SO THE UNION WILL HAVE MORE STRENGTH TO SEE TO IT THAT FROM NOW ON YOU ARE PAID ACCORDING TO THE SKILLED WORK YOU DO.



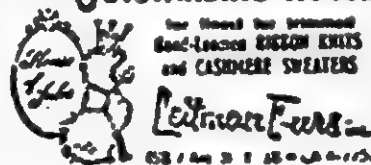
16 THE SPORTSWEAR & LEISURE LIVING

Bobbie Brooks, Union Master Agreement Sealed

Continued from Page One

town regions employing 3,500 workers. In addition, about 4,000 workers employed by the Cleveland-based firm in contract shops

THE OUTSTANDING HOUSE



are covered by the master agreement.

The agreement, effective today, gives piece workers a 5 per cent increase in 1965; 4 per cent more the following year and 3 per cent additional in 1967, the final year of the pact.

In addition, it gives time workers increases ranging from 22 cents to 25 cents an hour over the three-year period.

The master pact provides major gains in its schedule of minimum wage rates. For piece workers, the increase will go from \$1.60 in 1964 to \$1.73 in 1967. Time workers, excluding cutters, will receive minimums ranging from 20 cents to 35 cents above the Federal \$1.25 hourly wage.

A jubilant David Dubinsky, ILGWU president, said the new contract would narrow the com-

petitive wage gap for New York firms.

In Cleveland, Maurice Saltzman, Bobbie Brooks president, said the new agreement provides a sound, long-range foundation for progress of the employees and the company not only for the life of the agreement but for many years ahead.

The publicly-owned Bobbie Brooks was the first apparel-making firm to sign a master agreement with the Dubinsky-led union.

A year ago the company and the ILGWU set up the industry's first labor relations committee to review mutual problems on a long range basis with the aid of impartial chairman, David L. Cole.

"THE LATEST CONTRACT, agreed to weeks before expiration, reflects the progress of this committee," Mr. Saltzman said. "We believe the new contract is a significant step in building even better

relations between the International union and the company."

The union has master agreements with about a dozen large size apparel makers, including Jonathan Logan Majestic Specialties and Pernian.

The renewal contract makes provisions for higher hourly minimum rates should the Congress raise the Federal minimum.

Whenever, as is expected, the Federal rate goes up, the minimums at Bobbie Brooks are to be automatically raised by the same amount.

THE UNION made an important advance in the area of average hourly earnings for piece workers. The company agreed that during each of six months out of the January-October 1965 period average hourly earnings for groups of piece workers in each plant will reach \$1.50. It based this conten-

tion on the terms of the new master contract and the engineering formula it applies.

If workers do not reach the \$1.50 rate in the first year the union will have the right to renegotiate on its demand that group averages for piece workers be no less than 20 per cent above the craft minimum.

Mr. Dubinsky stated that, on the basis of present earnings and the provisions of the agreement, average hourly earnings of piece workers in all shops should reach \$2.05 during the life of the agreement.

The master pact increases the number of paid holidays from six and a half to seven. It continues the company's vacation policy which is for a 2-week vacation for those employed at least two years and one week for those employed at least six months.

SEAL UNION, B. BROOKS PACT

By HARRY BERLFEIN

NEW YORK.—Bobbie Brooks, Inc., the nation's largest sportswear producer, has approved a master agreement with the International Ladies Garment Workers Union calling for a 12 per cent wage increase over a three year period, higher minimums and safeguards for average earnings.

The pact covers 12 company-owned plants in six out-of-

See BOBBIE, Page 16

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision and Direction of Election issued by the undersigned on August 7, 1965,^{1/} and election by secret ballot was conducted on January 26, 1965, in the following unit:

INCLUDED: All production and maintenance employees at the Employer's Denton, Texas, plants, excluding designers, office clerical employees, guards, and supervisors as defined in the Act.

Results of the election as disclosed by the Tally of Ballots served on the parties are as follows:

Approximate number of eligible voters	202
Void ballots	1
Votes cast for Petitioner	108
Votes cast against participating labor organization	75
Valid votes counted	183
Challenged ballots	6
Valid votes counted plus challenged ballots	189
Challenges are not sufficient in number to affect the results of the election.	
A majority of the valid votes counted plus challenged ballots has been cast for the Petitioner.	

On January 29, 1965, the Employer timely filed objections to conduct affecting results of the election, simulataneously serving copies upon the Petitioner. The objections, consisting of seven typewritten pages include and incorporate five exhibits. In substance, the objections allege that Petitioner distributed false and misleading campaign propaganda on the day before and the day of the election, and the Employer did not have sufficient time before the election to correct misrepresentations contained therein.

No evidence has been submitted to support Employer's allegations except a newspaper article concerning a collective bargaining agreement between Petitioner and the Bobbie Brooks Company, and four campaign

^{1/} The Board granted the Employer's Request for Review and ordered a stay of election pending a final decision on review of the Regional Director's Decision. On December 7, 1964, the Board issued its Decision on Review affirming the Regional Director's findings.

leaflets which were issued by Petitioner. This evidence, which forms the basis of Employer's objections, is attached hereto and is marked to correspond with the designations used by Employer in its objections.

Exhibit "A-1" together with "A-2" were mailed to employees for delivery on January 25, 1965. Exhibit "B" was distributed to employees at the plant on the evening of January 25, and Exhibit "C" was distributed at the plant on the morning of January 26, the date of the election.

The undersigned has examined Exhibits "A-1" and "B" and, noting that no objection has been raised concerning these two exhibits, finds nothing therein which goes beyond the limits of legitimate campaign propaganda. The issue which we must consider concerns statements contained in Exhibits "A-2" and "C".

Exhibit "A-2" contains statements concerning alleged union contracts with employers in the garment industry. Employer contends that item 1 is false and misleading since the wage increase granted at the two companies mentioned therein was compensation for a reduction in hours under the provisions of that agreement. Employer further contends that the statement in Exhibit "C" that ". . . in Laredo the Union Contract provides a 25¢ an hour wage increase for Cutting Dept. employees" is false and misleading since the Laredo Manufacturing Company contract contains no provision for Cutters.

The recognition clause in Petitioner's agreement with Amedee Frocks and Laredo Manufacturing Company reflects that the unit includes all non-supervisory production and maintenance, packing and shipping employees employed by the Employer. Job classifications, as such, have not been assigned to employees, but they are generally used to describe the function performed. Prior to the execution of the present agreement, the wage rate for operators with six months or more experience was \$1.25 per hour. The Laredo agreement provides a 15¢ per hour increase effective July 6, 1964, for all workers who have been employed six months or more. Operators receive an additional 10¢ per hour on September 6, 1965. Eighty-eight percent of the employees in the unit are operators. The one and only cutter and the one apprentice at Laredo Manufacturing received their wage increases from a compensating increase to offset a reduction in the work week from

37 1/2 to 35 hours per week. The number of hours these employees worked was not reduced, but the change resulted in an additional 2 1/2 hours per week at overtime rates. The resulting increase, including the additional overtime pay, amounts to about 23¢ per hour for the cutter and 19¢ per hour for the apprentice. Employees at Amedee Frocks received a 15¢ per hour increase and will receive the full 25¢ per hour increase during the term of the agreement.

Employer contends that Item 2 of Exhibit "A-2" is misleading since only piece workers receive the \$1.60 minimum and the 25¢ per hour increase is to be granted over a 3-year period. Also, that the reference to the cutting and shipping department at Kabro, Inc. (Exhibit "C") is false since the shipping department at Kabro is not included in the unit.

An agreement was reached with Kabro, Inc. in April, 1964, and the wage increases agreed upon were put into effect. Before the contract was reduced to writing, Kabro, Inc. sold its plant to another employer, and an agreement with this employer is currently being negotiated. The wage rates in effect at the time of the sale have not been altered by the purchaser.

The unsigned Kabro agreement provides for a 25¢ per hour increase over a three-year period with a 10-cent increase in 1964, 10 cents due in April 1965, and another 5 cents to be effective in April 1966. Piece workers are provided a 6 1/2% increase in earnings effective in April 1964, and final inspectors and floor girls are provided with a decrease in work week from 40 to 37 1/2 hours per week without any loss in pay. The Petitioner contends that the only workers at Kabro earning less than \$1.60 per hour are newly hired, inexperienced workers who are paid a "learner's rate". Cutters in the Cutting and Shipping Department at Kabro are included in the unit, but shipping clerks are not. Cutters received the benefits negotiated by the union, and shipping employees were voluntarily granted equal benefits by the company.

Employer contends that Item 3 of Exhibit "A-2" is false and misleading as demonstrated by a news paper article appearing in a January 4, 1965, issue of "Women's Wear Daily", attached as Exhibit "D". Petitioner

contends that the accuracy of its statement is demonstrated by an article appearing in the January 1, 1965, edition of a newspaper called "Justice", attached as Exhibit "E".

The agreement with Bobbie Brooks, Inc. was negotiated in nationwide bargaining and has not been published and distributed at the local level as of this writing. Based upon an examination of the two newspaper articles and the expired Bobbie Brooks agreement, the undersigned concludes that Petitioner's assertions with respect to the Bobbie Brooks agreement were both accurate and truthful.

Employer contends that Item 5 of Exhibit "A-2" is false since the Nardis Company did not offer 15 cents per hour increase at the start of negotiations and has not indicated whether or not its employees will obtain two weeks' vacation after two years of employment. Employer states that Nardis' last offer on wages was 7 1/2¢ per hour increase the first year with 4¢ per hour increases during the two ensuing years of a three-year contract.

Since the Petitioner's leaflet reflects that Nardis negotiations are in progress and makes no claims as to a final agreement with that company, it is concluded that no false or misleading impressions were conveyed by the statement concerning the status of negotiations, which are, in fact, underway.

Finally, Employer contends that none of the enterprises alluded to are actually competitors of Employer and that any comparison thereof with Employer's wages and benefits necessarily imposes false impressions upon the voters.

The undersigned finds no merit to this contention.

An election will be set aside on the basis of written propaganda if it contains misrepresentations or other campaign trickery which involves a substantial departure from the truth at a time which prevents another party from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have an impact on the election.

Hollywood Ceramics Company, Inc., 140 NLRB 221.

Upon consideration of the above described material and other leaflets distributed by Petitioner during the pre-election campaign, the undersigned concludes that Petitioner's campaign propaganda does not constitute a substantial departure from the truth calculated to trick or delude employees. Employer's objections are therefore overruled. cf. Walgreen Co., 140 NLRB 1141, Steel Equipment Company, 140 NLRB 1158. Since the Tally of Ballots reflects that Petitioner has received a majority of the valid votes counted plus challenged ballots, Petitioner shall be certified.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that International Ladies' Garment Workers Union, AFL-CIO, has been designated and selected by a majority of the employees of Russell-Newman Manufacturing Company, Inc., in the unit found appropriate, as their representative for the purpose of collective bargaining, and that, pursuant to Section 9(a) of the Act, the said organization is the exclusive representative of all employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

DATED at Fort Worth, Texas, this 5th day of March, 1965.

/s/ Elmer Davis, Regional Director
National Labor Relations Board
Sixteenth Region
110 West Fifth Street
Fort Worth, Texas

Attached Exhibits A-1, A-2, B, C and D appear at J.A. #'s 36 thru 43.

REQUEST FOR REVIEW

Now comes RUSSELL-NEWMAN MANUFACTURING COMPANY, INC., hereinafter called "Employer", and, pursuant to Section 102.69(c) and Section 102.67(b), (c) and (d) of the Rules and Regulations and Statements of Procedure, Series 8, of the National Labor Relations Board, and requests the Board to grant review in the above captioned and numbered cause and for grounds of such Request would show the Board the following:

I.

That on January 26, 1965, a representation election was held among the Employer's employees in Denton, Texas. Results of the balloting in this election were as follows:

Approximate number of eligible voters	202
Void Ballots	1
Votes cast for Petitioner.	108
Votes cast against participating labor organization . . .	75
Valid votes counted	183
Challenged ballots	6
Valid votes counted plus challenged ballots	189
Challenges are not sufficient in number to affect the results of the election.	
A majority of the valid votes counted plus challenged ballots has been cast for the Petitioner.	

The Employer filed Objections to the Conduct Affecting the results of the election. The Regional Director for the Sixteenth Region issued his "Supplemental Decision and Certification of Representative" herein on March 5, 1965. In this decision the Regional Director overruled the Employer's Objections and certified the petitioning union as representative.

II.

The Employer's Objections To the Conduct Affecting the Results of the Election were and are as follows:

"1. On January 23, 1965, Petitioner caused to be mailed to the employees of Employer the letter attached hereto marked Exhibit "A-1" and made a part hereof for all purposes, which letter had enclosed with it a "Newsletter" dated January 25, 1965, a copy of which is marked Exhibit "A-2", attached hereto and made a part hereof for all purposes. Exhibits "A-1" and "A-2" were not received by the employees who were eligible to vote in said election until the evening of January 25, 1965, after they returned home from work.

2. On the evening of January 25, 1965, Petitioner caused to be handed out to the employees eligible to vote in said election a handbill, a copy of which is marked Exhibit "B", attached hereto and made a part hereof for all purposes.

3. On the morning of January 26, 1965 (the day of the election), Petitioner caused to be handed out to the employees eligible to vote in said election a handbill, a copy of which is marked Exhibit "C", attached hereto and made a part hereof for all purposes.

4. The above-referred to election was held at Employer's sewing plant in Denton, Texas, between the hours of 2:00 and 3:30 o'clock P. M. on January 26, 1965, and at Employer's main plant in Denton, Texas, between the hours of 4:00 and 4:30 o'clock P. M. on January 26, 1965.

5. Statements contained in the said exhibits attached hereto are material; are false and misleading (as hereinafter more specifically alleged); the mailing and distribution thereof was so timed as to prevent any replies by Employer; said statements could not be intelligently evaluated by the employees; said statements were calculated to and did in fact deceive said employees as to material facts; and they were calculated to and did have a significant impact on said election. The facts purportedly stated in said Exhibits "A-1" through "C" were peculiarly within the knowledge of Petitioner.

Said Exhibits "A-1" through "C", inclusive, are alleged to be false and misleading in a number of particulars including but not limited to the following, to-wit:

(a) Exhibit "A-2" states as follows:

"In Laredo, Texas — New Union Contracts were signed providing every Union member (over 300) with a 25¢ AN HOUR WAGE INCREASE at Amedee Frocks and Laredo Mfg. Co."

It is alleged that Laredo Mfg. Co., a manufacturer of dresses (while Employer, Russell-Newman Manufacturing Co., Inc. is a manufacturer of ladies lingerie), employs most of its workers on a piece work basis, while Russell-Newman Manufacturing Co., Inc. employs all of its employees on an hourly basis. Petitioner's contract with Laredo Mfg. Co. provides with respect to its employees on a piece work basis that commencing July 6, 1964 they will have a starting minimum rate of \$1.25 per hour which increases to \$1.35 per hour after 4 months and to \$1.40 per hour after 6 months. Said contract further provides that on September 6, 1965, the minimum starting rate will be \$1.25 per hour which will increase to \$1.40 per hour after 4 months and to \$1.50 per hour after 6 months. Said contract further provides with respect to hourly paid employees, that they will receive compensation wage rates to \$1.40 per hour maximum, with no provision for further increases. In addition, said contract provides that the number of hours worked by said employee shall be reduced from 37 1/2 hours per week to 35 hours per week. It is submitted that the increase in pay, which is not as claimed by Petitioner, a 25¢ per hour increase, was made to compensate the reduction in working hours. Russell-Newman Manufacturing Co., Inc. has regularly provided its employees with 40 hours per week.

(b) The second page of Exhibit "C" states as follows:

"We didn't have space in our 'NEWSLETTER' to point out that * * *; in Laredo the Union Contract provides a 25¢ an hour wage increase for Cutting Dept. employees."

It is alleged that the contract between Petitioner and Laredo Mfg. Co. in fact provides for increases effective July 6, 1964 for the Shipping Department employees from \$1.30 per hour to \$1.40 per hour and for Spreaders from \$1.25 per hour to \$1.40 per hour with no provision for further increases during 1965.

(c) Exhibit "A-2" states as follows:

"In Houston, Texas — The new Union Contract at Kabro, Inc. provides a minimum wage of \$1.60 AN HOUR and a 25¢ AN HOUR general increase for time workers. The vast majority of the more than 200 workers at Kabro earn far more than \$1.60 an hour."

It is alleged that the contract applicable to the employees of Kabro, Inc. at Houston provides that hourly workers wage rates are to escalate from \$1.25 per hour to \$1.50 per hour over a 3 year period. The minimum wage of \$1.60 per hour applies only to piece work employees. The employees at Kabro, Inc. who earn more than \$1.60 per hour are all piece work employees. None of the employees at Russell-Newman Manufacturing Co., Inc. are now employed on a piece work basis. The 25¢ an hour increase for time workers at Kabro, Inc. at Houston was not, as implied by Petitioner, a lump sum increase, but to occur over a 3 year period.

(d) Exhibit "C" states as follows:

"We did not have space in our 'NEWSLETTER' to point out that the Kabro of Houston plant signed an agreement with the Union granting a 25¢ an hour wage increase to members in the Cutting and Shipping department; * * *"

The Shipping Department of Kabro in Houston is non-union, is not under a union contract and has never been under a union contract.

(e) Exhibit "A-2" states as follows:

"In West Helena and Lepanto, Arkansas — More than 800 Union Members at the Bobbie Brooks Company now have a new Union Contract which provides a MINIMUM WAGE OF \$1.73 AN HOUR for operators, \$3.10 AN HOUR FOR CUTTERS; \$2.05 AN HOUR FOR SPREADERS; and a 22¢ AN HOUR INCREASE for other time workers."

Such statement is misleading as shown by the article from "Women's Wear Daily" of January 4, 1965, attached hereto marked Exhibit "D" and made a part hereof for all purposes.

(f) Exhibit "A-2" states as follows:

"And In Dallas — At the start of talks for a new Union Contract the Nardis Company has already offered the Union a 15¢ an hour raise in minimum wages, more Holiday Pay; and the Company is looking favorably on granting 2 weeks paid vacation for anyone who has worked 2 years or longer. (They now have 2 wks. after 5 yrs.)"

It is alleged that Nardis Company (a dress manufacturer) and Petitioner have been negotiating on a new contract for approximately 2 months. In said negotiations Nardis did not, as stated by Petitioner, at the "start of talk for a new union contract"

* * * "offer the union a 15¢ raise in minimum wages," but to the contrary, the original offer of Nardis was a 5¢ increase for the first year of a three year contract, and a 4¢ each for the second and third years. Last week the company's offer was increased to 7 1/2¢ for the first year with 4¢ remaining for the second and third years. Also the Company has not looked favorably (or unfavorably) to granting a 2 weeks paid vacation for anyone who has worked 2 years or longer. The Company made an original offer of 3 week vacation for any employee employed over 20 years, and Petitioner countered with a demand for 2 weeks for any employee employed over 2 years. Negotiations have proceeded no further than this.

Russell-Newman Manufacturing Co., Inc. did not have time before the election to correct the above alleged misrepresentations, and its employees were not in a position to know the truth thereof.

6. None of the concerns described in Exhibits "A-2" and "C" are competitors of Russell-Newman Manufacturing Co., Inc., and thus any wage comparisons to them are misleading in that they do not apply to comparable operations or equivalent degree of skill required for the jobs involved. It is submitted that the standard applied in Hollywood Ceramics Co., 140 N.L.R.B. No. 36, 51 L.R.R.M. 1600 (1962) should be here applied.

7. Employer has had very little time to investigate the accuracy of the statements contained in Exhibits "A-1" through "C" inclusive, and the allegations set forth in the paragraphs above are based upon the best information that could be obtained in such short period of time. It is submitted that a hearing unto this matter will verify the above allegations and probably considerable additional false and misleading statements contained in said Exhibits. It is pointed out that none of the above material was placed in the hands of the employees of Russell-Newman Manufacturing Co., Inc. until after the employer was under the so-called 24 hour rule.

WHEREFORE, PREMISES CONSIDERED, Employer prays that the Honorable Regional Director, designate a hearing officer to take evidence regarding these objections, after due and proper notice to all parties, and that said election of January 26, 1965 be set aside and a new election be ordered."

III.

The Regional Director disregarded Employer's request for a hearing on its objections and decided all issues involved on the basis of an ex parte administrative investigation.

IT IS SUBMITTED THAT THE REGIONAL DIRECTOR'S DECISION IN THIS CAUSE IS ERRONEOUS FOR THE REASON THAT A SUBSTANTIAL QUESTION OF LAW AND POLICY IS RAISED BECAUSE OF A DEPARTURE FROM OR AN ABSENCE OF OFFICIALLY REPORTED BOARD PRECEDENT,

AND THE REGIONAL DIRECTOR'S DECISION ON A SUBSTANTIAL FACTUAL ISSUE IS CLEARLY ERRONEOUS ON THE RECORD, AND SUCH ERROR PREJUDICIALLY AFFECTS THE RIGHTS OF EMPLOYER HEREIN FOR THE FOLLOWING REASONS:

- (1) The Regional Director failed to grant the Employer herein a hearing as to its above objections. There are many substantial factual issues upon which the Regional Director is clearly erroneous and such error is highly prejudicial to the Employer herein. In his Supplemental Decision, the Regional Director makes ex parte fact findings upon each disputed fact issue which was raised by the Employer's objections. He obviously makes these fact findings on the basis of his ex parte investigation of certain union contracts and his ex parte discussions with union leaders concerning their agreements and negotiations with other employers, upon which subject these union leaders had and have superior knowledge from that possessed by the Employer herein or by any other persons whatsoever. It is pointed out that by making such exparte findings, based upon an ex parte investigation, the Regional Director denied the Employer its right of cross-examination of the union leaders involved and of all other witnesses relied upon by the Regional Director, and further denied the Employer its right to come forward with affirmative evidence to prove that the misrepresentations alleged in Employer's Objections were substantially and materially false. Employer here again asserts, as set out in its Objections herein that the representations by the union made just prior to the election herein, to which the Employer had no chance to reply before the election, were material misrepresentations concerning facts which were peculiarly within the knowledge of the union and which misrepresentations did, in fact, influence the employees of the Employer in this election.

The above findings on the part of the Regional Director are arbitrary and capricious, as is his refusal to grant a hearing herein. Such failure is also in violation of the due process

provision of the United States Constitution. In support of its Request for a full and adequate hearing herein, the Employer cites the Board to the following authorities:

NLRB vs. Sidran, 181 F2d 671, Ct. App. 5, 1950;
NLRB vs. Air Control Products of St. Petersburg, Inc., 335 F2d 245, Ct. App. 5, 1964; NLRB vs. Standard Transformer Company, 2020 F2d 846, Ct. App. 6, 1953.

- (2) The Regional Director's finding herein is erroneous for the reason that a substantial question of law and policy is raised because there is a direct departure from officially reported Board precedent and there is an absence of officially reported Board precedent to support the Regional Director in his finding. In addition, three United States Courts of Appeal have held contra to the Regional Director's Decision on substantially the same factual issues. In this connection, Employer cites the Board to the following authorities:

United Aircraft Corp., 31 LRRM 1437, 103 NLRB No. 15, NLRB, 1953; NLRB v. Trancoa Chemical Corp., 50 LRRM 2407, 303 F2d 456, Ct. App. 1st, 1962; Cleveland Trencher Co., 47 LRRM 1371, 130 NLRB 59 (1961); Cross Co. v. NLRB, 47 LRRM 2519, 286 F2d 799, 6th Ct. App. (1961); NLRB v. Houston Chronicle Publishing Co., 49 LRRM 2782, 300 F2d 273, 5th Ct. App. (1962); Gummed Products Co., 36 LRRM 1156, 112 NLRB 141 (1955); Hollywood Ceramics Co., 140 NLRB 36, 51 LRRM 1600 (1962).

- (3) Employer, as grounds for review herein, hereby renews and asserts all objections it has heretofore filed herein in its Objections To The Conduct Affecting The Results of Election as outlined above.

WHEREFORE, this Request considered, Employer prays that the Board grant review herein, and, after such review, that the Board set aside the Supplemental Decision and Certification of the Regional Director and order a new election herein, or, alternately, that the Board remand this cause and order the Regional Director to hold a complete and full hearing as to all disputed facts herein.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: /s/ Fritz Lyne

By: /s/ George C. Dunlap

1100 Adolphus Tower
Dallas, Texas 75202
Riverside 1-4871

Attorneys for Employer

[Certificate of Service]

[Filed March 26, 1965]

^C_O_P_Y NATIONAL LABOR RELATIONS BOARD

NLRB, 16th Region
Att: Elmer P. Davis
Ft. Worth, Texas

Russell-Newman Manufacturing Co., Inc.
Att: Frank Martino
P. O. Box 640
Denton, Texas

Lyne, Blanchette, Smith & Shelton
Att: Fritz Lyne and George Dunlap, Esqs.
1100 Adolphus Tower
Dallas, Texas

Int'l. Ladies Garment Wrks.
Union, AFL-CIO
1008 1/2 Wood St.
Dallas, Texas

Mullinax, Wells, Morris &
Mauzy
Att: Fred Q. Weldon, Jr.
1601 National Bankers Life
Building
Dallas, Texas

RE: RUSSELL-NEWMAN MANUFACTURING COMPANY, INC., 16-RC-3714. IT IS HEREBY ORDERED THAT THE EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE BE, AND IT HEREBY IS, DENIED AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING REVIEW. BY DIRECTION OF THE BOARD:

Howard W. Kleeb
Associate Executive Secretary
National Labor Relations Board

[Filed May 25, 1965]

APPLICATION FOR SUBPOENA DUCES TECUM

TO : THE HONORABLE REGIONAL DIRECTOR
SIXTEENTH REGION
NATIONAL LABOR RELATIONS BOARD

Now comes Russell-Newman Manufacturing Company, Inc., Respondent in the above entitled and numbered cause, and moves the Honorable Regional Director to issue his Subpoena Duces Tecum commanding the Honorable Elmer Davis, Regional Director for the Sixteenth Region of the National Labor Relations Board, to appear and give testimony in the above captioned and numbered cause on the 9th day of June, 1965, at 10:00 o'clock a.m., Central Standard Time, in the hearing room, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas, and at that time to bring with him the following:

- (1) The collective bargaining contract between Amedee Frocks and Laredo Mfg. Co. and the International Ladies' Garment Workers' Union, AFL-CIO.
- (2) The written instrument encompassing the agreement between Kabro, Inc. of Houston, Texas and the International Ladies' Garment Workers' Union, AFL-CIO, which agreement was reached in April, 1964.
- (3) The expired collective bargaining agreement between Bobbie Brooks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.
- (4) All written correspondence and memorandums of any nature whatsoever now in the files or under the control of said Regional Director, which correspondence and memorandums in any way, directly or indirectly,

entered into or were received in connection with the Supplemental Decision and Certification of Representative in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".

- (5) All written statements of witnesses in the files or under the control of the said Regional Director taken in the investigation of Employer's Objections To Conduct Affecting The Results of Election in Case No. 16-RC-3714 by the said Regional Director, and any written statements of witnesses which in any way, directly or indirectly, entered into or were reached in connection with the Supplemental Decision and Certification of Representative in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: /s/ Fritz Lyne

Fritz Lyne
4000 First National Bank Bldg.
Dallas, Texas 75202
Riverside 1-4871

Attorneys for Respondent

[Certificate of Service]

Attached Exhibits are duplicate of Exhibits appearing at JA pp. 36 - 43 and p. 49.

APPLICATION FOR SUBPOENA DUCES TECUM

**TO: THE HONORABLE REGIONAL DIRECTOR
SIXTEENTH REGION
NATIONAL LABOR RELATIONS BOARD**

Now comes **RUSSELL-NEWMAN MANUFACTURING COMPANY, INC.**, Respondent in the above entitled and numbered cause, and moves the Honorable Regional Director to issue his Subpoena Duces Tecum commanding Mr. John Vickers of the International Ladies' Garment Workers' Union, AFL-CIO, to appear and give testimony in the above captioned and numbered cause on the 9th day of June, 1965, at 10:00 o'clock a.m., Central Standard Time, in the hearing room, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas, and at that time to bring with him the following:

- (1) The collective bargaining contract between Amedee Frocks and Laredo Mfg. Co. and the International Ladies' Garment Workers' Union, AFL-CIO.
- (2) The written instrument encompassing the agreement between Kabro, Inc. of Houston, Texas and the International Ladies' Garment Workers' Union, AFL-CIO, which agreement was reached in April, 1964.
- (3) The collective bargaining agreement which is now in existence between the International Ladies' Garment Workers' Union, AFL-CIO and the successor employer at Kabro, Inc. of Houston, Texas.
- (4) The expired collective bargaining agreement between Bobbie Brooks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.
- (5) The collective bargaining agreement now in existence between Bobbie Brooks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.

- (6) All written correspondence and memorandums of any nature whatsoever now in the possession of the International Ladies' Garment Workers' Union, AFL-CIO, concerning the collective bargaining negotiations between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas in regard to the latest contract between the Nardis Company of Dallas, Texas and the International Ladies' Garment Workers' Union, AFL-CIO.
- (7) The collective bargaining contract now in existence between the Nardis Company of Dallas, Texas and the International Ladies' Garment Workers' Union, AFL-CIO.

Respectfully submitted,
LYNE, BLANCHETTE, SMITH & SHELTON

By: /s/ Fritz Lyne
4000 First National Bank Bldg.
Dallas, Texas 75202
Riverside 1-4871

Attorneys for Respondent

[Certificate of Service]

AFFIDAVIT

I, Vincent G. Meyer, an Official Court Reporter, United States District Court, Northern District of Texas, and a Notary Public in and for Tarrant County, Texas, certify the following:

That on May 26, 1965, I received in the United States Mail, Certified, Return Receipt Requested, the attached NOTICE OF TAKING DEPOSITIONS ON WRITTEN INTERROGATORIES (marked Exhibit No. 1) and the INTERROGATORIES directed to the Hon. Elmer Davis (marked Exhibit No. 2).

That on June 7, 1965, I called offices of the National Labor Relations Board in Fort Worth, Texas, for the purpose of setting up a convenient time and place with Mr. Davis for the taking of his answers to said Interrogatories; that I was advised by one Jim Hill, speaking for Mr. Davis, as follows: "Because our Motion to Strike was granted by the Trial Examiner, we decline to answer the Interrogatories

/s/ Vincent G. Meyer, Affiant.

STATE OF TEXAS
COUNTY OF TARRANT

SUBSCRIBED AND SWORN TO BEFORE ME, THE UNDERSIGNED
AUTHORITY, ON THE 7th DAY OF JUNE, 1965, A. D.

/s/ Charles L. Kee

NOTARY PUBLIC, TARRANT COUNTY, TEXAS

NOTICE OF TAKING DEPOSITIONS ON WRITTEN INTERROGATORIES

TO: THE HONORABLE ELMER DAVIS
REGIONAL DIRECTOR
SIXTEENTH REGION
NATIONAL LABOR RELATIONS BOARD

Please take notice that the attached Interrogatories will be propounded on Respondent's behalf to the Honorable Elmer Davis, Regional

Director, Sixteenth Region, National Labor Relations Board, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas, at the taking of his deposition before Mr. Vincent Myer, a Notary Public of Tarrant County, Texas, whose address is 201 Federal Courthouse, Fort Worth, Texas.

Respectfully submitted,
LYNE, BLANCHETTE, SMITH & SHELTON

By: /s/ Fritz Lyne

By: /s/ George C. Dunlap

4000 First National Bank Bldg.
Dallas, Texas 75202
Riverside 1-4871

Attorneys for Respondent

INTERROGATORIES

TO: THE HONORABLE ELMER DAVIS
REGIONAL DIRECTOR
SIXTEENTH REGION
NATIONAL LABOR RELATIONS BOARD

- (1) Please list all of the collective bargaining contracts which were examined in connection with your Supplemental Decision and Certification of Representative in Case No. 16-RC-3714.

- (2) Please state which of the collective bargaining contracts listed in your answer to Paragraph (1) above were in your files at the time of your receipt of these Interrogatories.
- (3) Please list by name of witness and date of statement all written statements which were taken or provided to you in connection with your Supplemental Decision and Certification of Representative in Case No. 16-RC-3714.
- (4) Please list by name of witness and date of statement all written statements referred to above in Paragraph (3) which were in your files at the time of your receipt of these Interrogatories.
- (5) Please fully describe all memorandums which were in your file on Case No. 16-RC-3714 at the time of your receipt of these Interrogatories.
- (6) Please fully describe all written correspondence which was in your file on Case No. 16-RC-3714 at the time of your receipt of these Interrogatories.
- (7) Please state the names and addresses of all witnesses who were interviewed by you or your agents in connection with your Supplemental Decision and Certification of Representative in Case No. 16-RC-3714.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: /s/ Fritz Lyne

By: /s/ George C. Dunlap

4000 First National Bank Bldg.
Dallas, Texas 75202
Riverside 1-4817

Attorneys for Respondent

[Certificate of Service]

TRANSCRIPT OF PROCEEDINGS

Community Room,
County Courthouse,
Denton, Texas.
Monday, September 27, 1965.

The above-entitled matter came on for hearing, pursuant to notice,
at 9:30 o'clock a.m.

BEFORE:

FREDERICK U. REEL, Trial Examiner

* * * * *

3

PROCEEDINGS

TRIAL EXAMINER REEL: The hearing will be in order.

This is a formal hearing before the National Labor Relations
Board in the matter of Russell-Newman Manufacturing Company, Case
No. 16-CA-2318.

The Trial Examiner conducting this hearing is Frederick U. Reel.
Counsel for the parties will please state their appearances for the
record.

MR. KING: For the General Counsel, James A. King, Jr., 110 West
Fifth Street, Fort Worth, Texas.

MR. RICHARDS: For the Charging Party, David R. Richards of the
law firm Mullinax, Wells, Morris & Mauzy, 1601 National Bankers Life
Building, Dallas, Texas.

MR. LYNE: For the Respondent, Fritz Lyne and George Dunlap,
both of the firm of Lyne, Blanchette, Smith & Shelton, 4000 First National
Bank Building, Dallas, Texas.

Mr. Martino, Mr. Frank Martino is also appearing for the Re-
spondent as a representative of the company.

TRIAL EXAMINER: You gentlemen are familiar with the rules
governing these proceedings, including the fact that you have an automatic
exception to adverse rulings of the Trial Examiner and that exhibits should
be in duplicate.

You may go ahead, Mr. King.

4 MR. LYNE: Mr. Examiner, could I inquire at this point your feeling toward invoking the rule?

The Respondent has no desire to do so unless General Counsel desires to but I don't want it invoked in the middle of the hearing. It should either be invoked now or not at all.

TRIAL EXAMINER: I quite agree with that comment, Mr. Lyne.

It hadn't occurred to me that we were going to have that. There is no necessity for it but if any counsel wishes to invoke the rule, this is the time to do it.

MR. KING: General Counsel doesn't desire to invoke the rule.

TRIAL EXAMINER: I take it no one does.

You may go ahead, Mr. King.

MR. KING: This case goes out of the Union's refusal to bargain charge based upon the certification issued by the Regional Director and the facts are admitted.

As I understand the Trial Examiner's prior ruling on my motion for judgment on the pleadings was that Respondent was entitled or at least, the Trial Examiner was inclined to hear evidence on matters raised in the Respondent's objections to the election held prior to the certification of the Union in this case.

General Counsel's position remains unchanged with regard to the hearing of evidence on the objections.

5 Just very briefly, the Respondent filed objections to the election and some 39 days thereafter the Regional Director issued his decision, his supplemental decision and certification of representative.

During that time Respondent did not submit to the Regional Director any evidence other than that contained in the objections itself, in fact, Respondent did not become specific as to what evidence he had in mind effecting the conduct of the election until he submitted his offer of proof in response to the Trial Examiner's, in this case, the Trial Examiner's opinion and show cause order.

Therefore, General Counsel does and will object to any evidence going to the objections of conduct effecting the election.

On the other hand, if the Trial Examiner is to hear that evidence and make a hearing on objections out of the unfair labor practice hearing, Counsel for General Counsel is of the opinion that he should act as the attorney does who represents the Regional Director in an objections hearing and not take a part of advocate in as far as the conduct effecting the election is but see to it that all of the evidence that the Regional Director has concerning the objections does get in the file or in the record.

I think that will suffice as my opening remarks.

At this time I would like to offer into evidence General Counsel's
6 formal papers, General Counsel's Exhibit 1, consisting of General Counsel's Exhibit 1(a) through 1(pp), 1(pp) being an index and description of the formal documents.

These formal exhibits have been shown to the parties.

TRIAL EXAMINER: Do these papers include duplicates or any of the papers in the certification proceeding?

MR. KING: Yes.

TRIAL EXAMINER: Do they particularly include the objections to the election, the documents--

MR. KING: As attachments to other exhibits therein, they do.

All of those documents are attached as Exhibit 1(f).

TRIAL EXAMINER: All right.

Any objection to the receipt of General Counsel's Exhibits 1(a) through double p?

MR. LYNE: Respondent's counsel has examined the instruments and has no objection as to them being the instruments that have been either filed, ordered or issued in connection with this matter.

Of course, the Respondent does not accept the content of those instruments which are adverse to its position and with that reservation, there is no objection.

TRIAL EXAMINER: The exhibits will be received.

7

(The documents above-referred to were marked General Counsel's Exhibits Nos. 1(a) thru 1(pp) for identification and were received in evidence.)

MR. KING: Would you mark these beginning with 3?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. LYNE: If the Trial Examiner please, before we go further in the hearing, other than the identification of the formal documents, Counsel for the General Counsel has raised a question and Respondent counsel has the same question, to find out the nature of this hearing and perhaps the Trial Examiner would set forth the rules or perhaps he would like to go off the record.

TRIAL EXAMINER: No, I think it should be on the record.

I denied the motion for summary judgment in this case because, as I think I indicated in papers issued at that time, I thought that the objections to the election stated on their face the prima-facie case and that the Regional Director in disposing of those objections referred to documents which were not in the record, which neither I nor the Board nor Court of Appeals had access to and therefore, that the Respondent, since there was an issue which it had raised, was entitled to have a record which could be reviewed on that issue.

8

If the Regional Director had disposed of the case on the ground that the Respondent hadn't presented the proper documents in support of its objections or if the Regional Director had attached as exhibits to his decision the contracts which he refers to therein, I might have thought this case was more like the Norhoff Case (phonetics) in which I granted the motion for summary judgment and the case, as you gentlemen all know, is now in the Court of Appeals where I suppose this one is very apt to end up.

Therefore, at this time it seems to me that it is my expectation, at least, that there will be introduced here by somebody the critical documents which bear on the truth or falsity of the allegations which the Respondent challenges as being so false and misleading as to render the election invalid.

I am not, I think, prepared to state unless I have to, of course, who has the burden of putting these in. I don't think that in this day and age that that is really terribly material.

The important thing is, as I read the cases that they be in and once they are in I know the Trial Examiner's function is perhaps sometimes important but in this case probably not.

This case is going to be decided by the Board, most likely, and most likely by the Court of Appeals, if I understand the intentions of all counsel, on the basis of the record that is here made and my view of the testimony and the exhibits is probably not going to be very important but I do consider it important that they be there for more final authority to review.

MR. RICHARDS: Before we get into--I simply want to state the Charging Party's view that in response to, it seems to me a rather surprising attitude by the General Counsel, that this proceeding gets converted somehow from a proceeding, I guess, under Section 10 to one under Section 9 of the Act.

I take it--I don't understand that General Counsel is going to act as an honest broker between the parties here and try to waive the objections to the election. I find this curious and I would be interested how the Examiner feels toward the nature of this proceeding.

TRIAL EXAMINER: As far as I am concerned, General Counsel establishes, I suppose, a case by showing a certification and a refusal to bargain. In view of the rulings already made, it is perfectly plain that the Respondent's defense is the invalidity of the certification.

I would be inclined to agree with you, Mr. Richards, since General Counsel was the prosecutor here and as such, has an interest in stating the validity of the certification on which he relies.

10 I don't think it is terribly important, again, what labels you put on it. Obviously, this is not a representation proceeding; this is an unfair labor practice proceeding and the kind of relief that will be issued, if any, is that which would be appropriate in an unfair labor practice case.

I don't think anyone is under the misapprehension about that.

MR. LYNE: I have one more question--

TRIAL EXAMINER: There is just one more comment I want to make, Mr. Lyne, and that is, my role in this from the beginning and a week from now and I assume, from here on out, stems from my view that, as I read the case, if the Respondent is entitled to a hearing and if he doesn't get one at the "R" stage of the case, then it is our job to see that he gets one at the unfair labor practice stage of the case.

This, I think, is the law that is laid down, at least, by the Fourth and Fifth Circuits. The Board has not always been inclined to go along. I indicated my reasons for going along in this case and the Board, by denying review, has provisionally, at least, agreed.

I think my position is clear and I think my function is clear.

MR. LYNE: Well, I have this question.

The Respondent filed with the Regional Director its objections to the election. The Regional Director ruled adverse to the Respondent and Respondent asked leave for review by the Board.

11 The Board denied the review.

Does the Trial Examiner envisage his function here as set forth in the Administrative Procedure Act, as one to make a decision or does the Trial Examiner feel he is bound by the decision of the Board on that question with the subsequent fact that the General Counsel has asked for a summary judgment, the Trial Examiner has overruled him; he has asked the Board to review it and the Board has denied that review.

TRIAL EXAMINER: The situation is certainly confusing in that respect and that--it may be that it would have been better if I had granted Mr. King's motion for summary judgment, the Board had affirmed me and

you had gone to the Court of Appeals and the Court of Appeals had remanded the case which I am quite certain that it would have done.

That might have cleared the air procedurally at the expense of a year or so of fruitless paper filing and litigation.

I thought it more sensible to cut through that and apparently the Board agreed because they denied the motion to reverse my denial of the motion for summary judgment.

I suppose you have a point, Mr. Lyne, that the Board at one time sustained the Regional Director in not granting a hearing and in the next go around sustained the Trial Examiner in ordering a hearing and the Board is, I suppose, placed in that inconsistency but once again, I don't
12 think it is terribly important.

The important thing is that you get your record made terribly important.

The important thing is that you get your record made for ultimate review.

MR. LYNE: My interest is, of course, am I before a Hearing Officer who is to see that a fair record is made or am I before a decision maker who will make the initial decision, right or wrong?

TRIAL EXAMINER: I will make the initial decision, right or wrong and whether right or wrong probably isn't important because it is almost certain to be a decision on paper and not demeanor and fact finding although it may not be.

MR. LYNE: And the Trial Examiner will pass on questions of credibility, if they arise?

TRIAL EXAMINER: Certainly, however, I suppose that if the facts as presented are either more nor less than those stated by the Regional Director in disposing of your objections that then I should feel disposed to go along with him on the grounds that on the facts there stated the Board has already spoken.

So, if the facts come out to be exactly as Mr. Davis reports them in his decision, then I think I should show that much difference, not having shown very much up to now.

All right, Mr. King.

- 13 MR. KING: At this time General Counsel, pursuant to the discussion with all counsel before the hearing, will stipulate into evidence or offer the following stipulation:

General Counsel's Exhibit 3 is a letter dated March 5, 1965 addressed to Respondent, Attention Mr. Frank Martino from Mullinex, Wells, Morris & Mauzy by David R. Richards.

General Counsel's Exhibit 4 is Page 2 of General Counsel's Exhibit 3.

(The documents above-referred to were marked General Counsel's Exhibits Nos. 3 and 4 for identification.)

MR. KING: General Counsel's Exhibit 5 is a letter dated March 10, 1965 addressed to Mr. David R. Richards from Lyne, Blanchette, Smith & Shelton, signed by Fritz Lyne.

(The document above-referred to was marked General Counsel's Exhibit No. 5 for identification.)

MR. KING: General Counsel's Exhibit 6 is a letter dated March 23rd, 1965 addressed to Russell-Newman Manufacturing Company, Inc., Attention Mr. Frank Martino from Mullinax, Wells, Morris & Mauzy and General Counsel's Exhibit 7 is Page 2 of General Counsel's Exhibit 6.

(The documents above-referred to were marked General Counsel's Exhibits Nos. 6 and 7 for identification.)

- 14 MR. KING: General Counsel's Exhibit 8 is a letter dated March 29, 1965 addressed to Russell-Newman Manufacturing Company, Inc., Attention Mr. Frank Martino from Mullinax, Wells, Morris & Mauzy by David R. Richards and General Counsel's Exhibit 9 is Page 2 of General Counsel's Exhibit 8.

(The documents above-referred to were marked General Counsel's Exhibits Nos. 8 and 9 for identification.)

TRIAL EXAMINER: What is the date of that?

MR. KING: March 29, 1965.

TRIAL EXAMINER: Well, I am confused. Are 6, 7, 8 and 9 all dated the same day?

MR. KING: No, one was March 23rd.

TRIAL EXAMINER: Oh, I see.

MR. KING: General Counsel's Exhibit 10 is a letter dated April 1, 1965 addressed to David R. Richards from George C. Dunlap.

(The document above-referred to was marked General Counsel's Exhibit No. 10 for identification.)

MR. KING: General Counsel's Exhibit 11 is a letter dated April 12, 1965 addressed to Mr. David R. Richards from George C. Dunlap.

(The document above-referred to was marked General Counsel's Exhibit No. 11 for identification.)

MR. KING: General Counsel's Exhibit 12 is a two-page letter dated April 12, 1965 addressed to Mr. Fritz L. Lyne, Lyne, Blanchette, Smith & Shelton from Mullinax, Wells, Morris & Mauzy by David R. Richards.

(The document above-referred to was marked General Counsel's Exhibit No. 12 for identification.)

MR. KING: General Counsel's Exhibit 13 is a letter dated May 17, 1965 addressed to Russell-Newman Manufacturing Company from Mullinax, Wells, Morris & Mauzy by David R. Richards. This exhibit consists of three pages, a two-page letter and a third page list of parties to whom carbon copies were sent.

(The document above-referred to was marked General Counsel's Exhibit No. 13 for identification.)

MR. KING: General Counsel's Exhibit 14 is a letter dated May 19, 1965 addressed to Mr. David R. Richards from George C. Dunlap.

(The document above-referred to was marked General Counsel's Exhibit No. 14 for identification.)

MR. KING: The offered stipulation is that these letters were sent on or about, sent and received on or about the date dated in the letter to the parties to whom they were addressed and that in this matter George C. Dunlap and Fritz Lyne were acting as attorneys for Respondent.

TRIAL EXAMINER: Is that stipulated, gentlemen?

MR. LYNE: So stipulated on behalf of Respondent.

MR. RICHARDS: I only want to add that I, David R. Richards, was acting on behalf of International Ladies' Garment Workers Union, AFL-CIO.

TRIAL EXAMINER: All right, with that understanding the exhibits are received in evidence.

(The documents above-referred to, heretofore marked General Counsel's Exhibits Nos. 3 thru 14, were received in evidence.)

MR. KING: At this time counsel for General Counsel will ask the Trial Examiner to take official notice of the decision and direction of an election dated August 7, 1964 in Case No. 16-RC-3714 and specifically to the finding in there as to the status of the Charging Party in this case as a labor organization.

TRIAL EXAMINER: Obviously, that entire record is subject to notice and if the case goes to the Court of Appeal it would be included by operation of law in the record without any further action by any party.

MR. LYNE: Also, Respondent counsel wanted to make an inquiry there.

Is it necessary to make an offer of the proceedings in the "R" case?

If the case goes to Circuit Court the Respondent would want all matters contained in the "R" case, exhibits, documents and testimony that was taken in that case because we are contending that the unit as found by the Regional Director is improper.

17 **TRIAL EXAMINER:** Well, it is my understanding that the entire record will go to the Court of Appeals in the event that a bargaining order is issued by the Board in this case and review is sought in the Court of Appeals. That Section 10--I beg your pardon, 9(d) of the Act.

MR. KING: Section 102.68 of the Board's rules and regulations defines the record.

MR. LYNE: I think we are protected by those but I want it clear in this record and no misunderstanding that if it goes to the Circuit Court, we are contending that the unit is improper and we want the entire record in 16-RC-3714 before the appropriate court.

MR. KING: In this connection I also request that the Trial Examiner take official notice of the certification in the supplemental decision in this case, the representative case of March 5, 1965 in that same case.

TRIAL EXAMINER: Well, as I say, insofar as the Trial Examiner and the Board are concerned, the related proceeding between the parties is always subject to official notice. So far as the court review is concerned, I think the statute is clear and the courts sometimes use the expression that the two proceedings are, in fact, one at the time they reach there.

MR. KING: The General Counsel rests.

18

TRIAL EXAMINER: Do you have anything to offer, Mr. Richards?

MR. RICHARDS: No, I simply want to call again to the Trial Examiner's attention the fact that there was a motion filed by the Charging Party seeking an order providing certain specific relief which I understand has been, the ruling on it has been deferred until such time as there is an intermediate report issued.

TRIAL EXAMINER: That is right.

I would expect--I, of course, read your motion and I would expect that you would file some sort of a supporting brief at the time briefs are filed in this matter.

MR. RICHARDS: With the exception of that, Charging Party has no evidence.

TRIAL EXAMINER: All right.

MR. LYNE: Mr. Trial Examiner, Respondent would like to see these relevant contracts that we have so diligently tried to get to look at.

TRIAL EXAMINER: I understand they are to be made available to you.

At this time we will go off the record.

Would you like to present them on the record, Mr. Richards?

MR. RICHARDS: I would like to present them on the record.

19 TRIAL EXAMINER: All right.

MR. RICHARDS: Some of these we only have a single copy and I will have to have them returned and there are some which have duplicates.

We are responding to the subpoena directly from Mr. John Vickers of the International Ladies' Garment Workers Union.

I will attempt to state it as I tender them so that the record will be clear what we are getting and then I will be happy to try to clarify any questions.

The subpoena calls for the current union contract and the proceeding contract between the union and Amadee Frocks and Laredo Manufacturing Company.

As I understand it, the agreements here are in identical form between the two. Actually, they read Laredo Manufacturing Company in both instances but for all purposes you may consider that they also apply to Amadee and those I think I have to have returned, if you want to make copies of them for the record.

As for the collective bargaining agreement with Kabro, here is the preceding agreement which I do have to have returned also and the current which is--we have additional copies of the current.

Bobby Brooks, Inc., the preceding agreement which is signed and we would appreciate it being returned.

20 The current contract with Bobby Brooks has been consummated for some time but has not been reduced to writing and we are unable at this time to tender a copy of the current contract.

TRIAL EXAMINER: When was it consummated, approximately?

MR. RICHARDS: I don't know, approximately six months ago.

If I recall correctly within a week or so immediately before the representation or a short time preceding the representation election there was a news story came out in Women's Wear Daily announcing it so I would assume that it has been at least six or seven months.

TRIAL EXAMINER: So, it was consummated prior to the representation election with which we are concerned with here?

MR. RICHARDS: Right and it simply has not been reduced to writing.

MR. KING: That news story that you are referring to was attached--

MR. RICHARDS: In this connection the objections that were filed by Mr. Lyne, were attached or incorporated the news story.

MR. LYNE: Do I understand counsel correctly that although the agreement was reached six months ago there is nothing in writing on it?

MR. RICHARDS: There is not a fully executed collective bargaining contract but the wage rates and everything was put into effect at the
21 time it was agreed to and they have been operating under the substantive terms of it.

This is rather common, I find, common practice.

MR. LYNE: Well, is there an unexecuted written document?

MR. RICHARDS: Not that I am aware of.

MR. LYNE: You mean they are operating orally?

MR. RICHARDS: As far as I understand. That is our understanding of it, yes, sir.

You asked for Nardis and here is the old Nardis agreement and the new Nardis agreement so with the limitations placed upon the statement, we have complied with the subpoena.

I notice the subpoena calls for the Bobby Brooks contract which applies to Bobby Brooks and its subsidiary operations of Helena and Lepanto.

The agreement that has been tendered applies to that operation.

MR. LYNE: Well, does this new oral agreement apply to the same concerns?

MR. RICHARDS: Exactly.

They negotiated, as I understand, with respect to Bobby Brooks, a master agreement that applies throughout whatever operations Bobby--I don't know how many operations Bobby Brooks has, 16 different plants

and the agreement applies, the master agreement applies throughout the 16 plants.

22 I take it that we have complied with the subpoena now?

MR. LYNE: It would appear so on the face except for the one and I have no way of knowing.

TRIAL EXAMINER: All right, do you want to examine those contracts?

MR. LYNE: If the Trial Examiner please, as our offer of proof and correspondence has indicated, we have been told certain provisions and found out from various sources that we could consider reliable what is in these contracts but we have never seen them and I have got about three inches of contracts here and since this is the first time we have had an opportunity, I would suggest a recess.

TRIAL EXAMINER: About how long a recess?

Obviously, I am going to grant a recess but--

MR. LYNE: I would suggest until after lunch and let us go through these. They are rather extensive documents and--

MR. RICHARDS: Well, I will object to that, Mr. Examiner.

TRIAL EXAMINER: What else do you plan to put on in the way of proof, Mr. Lyne, apart from these contracts?

MR. LYNE: Basically that, Mr. Examiner, except there is the question as to when some of these were executed and became effective, particularly the Nardis contract and I would like to make some inquiries on that and as to the nature of business of the various concerns, I would like to put on evidence that various of these concerns are not competitors
23 of Respondent and therefore not comparative.

TRIAL EXAMINER: Of course, as you gentlemen are aware, I have been somewhat mystified as to why this hearing was necessary at all. Certainly the businesses and whether they are or not the same as Russell-Newman, assuming that is material and I am not sure that it is, is a fact which isn't going to be in dispute and can be stipulated.

I can appreciate Mr. Lyne's interest in finally seeing these contracts.

I am not altogether clear, Mr. Lyne, why you can't introduce them and examine them at your leisure prior to filing a brief.

There are the documents and unless you think there may be matters in there which you will need to inquire of a witness, I don't see why you have to examine them right here and now.

MR. LYNE: Mr. Trial Examiner, I think that there are and it involves the terminology of what is an increase for an hourly employee and what is the minimum rate under the piece time worker, what is add on rate to a piece time rate which is going to vary from contract to contract, we think.

TRIAL EXAMINER: Very well.

It is now 10:45; what about 12:30?

Is that--

24 MR. LYNE: If it is not, I will at that time tell the Trial Examiner I am not through.

TRIAL EXAMINER: All right, we will adjourn until 12:30.

At that time if you haven't had time to have lunch, we will give you a little more time to eat.

(Whereupon, at 10:45 o'clock a.m., the hearing was recessed to reconvene at 12:30 o'clock p.m., the same day.)

25

AFTERNOON SESSION

12:30 p.m.

TRIAL EXAMINER REEL: On the record.

You may proceed, Mr. Lyne.

MR. LYNE: For the purpose of getting these exhibits in I would like to have Mr. Vickers take the stand, please.

MR. RICHARDS: We can probably stipulate them.

MR. LYNE: All right, if we can, I will have the reporter mark these.

(The documents above-referred to were marked Respondent's Exhibits Nos. 1, 2 and 3 for identification.)

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. LYNE: Respondent submits the following stipulation that Respondent's Exhibit 1, being a letter dated January 23, 1965 on the letterhead of International Ladies' Garment Workers Union, addressed Dear Friend and signed Sincerely yours, John Vickers, M-g-r.

Respondent's Exhibit 2 is dated January 25th, 1965 and entitled Union Election Campaign Committee, ILGWU, News Letter, Election Final.

Respondent's Exhibit 3 is an instrument on one side headed "Vote yes today" and on the other side addressed to Employees of Cutting and Shipping Department from Union Election Committee.

26

These all were drafted and prepared by a duly authorized officer of the Charging Party.

That Respondent's Exhibits 1 and 2 were deposited in the United States mail, addressed to Employees of Respondent in the bargaining unit on Saturday, January 23, 1965 and that a substantial number of the employees of Respondent in the said designed unit did not receive Respondent's Exhibits 1 and 2 until after 2:00 p.m. on Monday, January 25, 1965; that Respondent's Exhibit 3 was handed out to employees in the said bargaining unit on the morning of January 26, 1965.

Can it be so stipulated?

MR. RICHARDS: The only qualification I have on it, I think you said it was prepared by an officer of the Charging Party and actually, they are not officers, they are duly authorized representatives of the Charging Party.

MR. KING: So stipulate.

TRIAL EXAMINER: Very well, the stipulation is received. I take it that you are offering Exhibits--

MR. LYNE: I now offer Respondent's Exhibits 1, 2 and 3 into evidence.

TRIAL EXAMINER: Any objection?

MR. KING: No objection.

MR. RICHARDS: No objection.

27 TRIAL EXAMINER: They will be received.

(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 1, 2 and 3, were received in evidence.)

MR. LYNE: The Trial Examiner, I assume, will take judicial notice of the dates falling on the days of the week?

TRIAL EXAMINER: Certainly.

MR. LYNE: And as the prior papers in here will indicate, that the election was scheduled from 2:00 p.m. to 4:30 p.m. at Respondent's plant on January 26, 1965.

TRIAL EXAMINER: If that is what the papers show and I assume that is correct.

MR. KING: I just want to say, Mr. Examiner, that I do object to any evidence going in on the objections and I would like a continuing--

TRIAL EXAMINER: You have a continuing objection, based on your theory that the whole hearing shouldn't have been held.

All right, go ahead.

Whereupon,

WERNER FRIEDMAN

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lyne) Would you state your name, please?

28 A. Werner Friedman.

Q. Would you spell the last name, please? A. F-r-i-e-d-m-a-n.

Q. By whom are you employed, Mr. Friedman? A. Nardis Sportswear.

Q. Where is Nardis Sportswear located? A. Dallas, Texas.

Q. What is your position with Nardis Sportswear? A. Production manager.

Q. And you are here in response to a subpoena, is that correct?

A. That is correct.

Q. How long have you occupied your present position with Nardis Sportswear? A. About 10 years.

MR. RICHARDS: We will stipulate the contracts in if that is what you are worried about.

MR. LYNE: Yes, let me mark these.

(The documents above-referred to were marked Respondent's Exhibits Nos. 4 and 5 for identification.)

MR. LYNE: May it be stipulated that Respondent's Exhibit 4 is the contract between Nardis Sportswear and the Charging Party dated February 19, 1962 and that Respondent's Exhibit 5 is a contract between Nardis Sportswear, Inc., and the Charging Party dated February 1, 1965

29 and that these are true and authentic copies of said agreements which were executed by the parties?

MR. RICHARDS: We will stipulate that these are authentic copies of the collective bargaining contracts and that they were in effect the dates indicated.

MR. KING: So stipulated.

TRIAL EXAMINER: Might I inquire when the January 1st, '65 contract was signed?

MR. LYNE: I was going to ask that.

TRIAL EXAMINER: Oh, you are going to go into that, all right. Go ahead.

MR. RICHARDS: It was not executed at the time the handbill went out and it was executed, we think--I believe it was sometime in June--

TRIAL EXAMINER: Well, this will come out in due course.

MR. LYNE: Respondent offers Respondent's Exhibits 4 and 5 for the limited purpose of showing the terms of the contract.

MR. RICHARDS: I don't understand that.

We want it to go in for all purposes.

TRIAL EXAMINER: As far as I am concerned, the contracts are offered and they will go into evidence and they are in evidence for all purposes.

MR. LYNE: I don't want to be bound by--

30 TRIAL EXAMINER: Well, you aren't challenging the correctness of those as the contracts?

MR. LYNE: Well, I don't know whether they are correct or not and that is one of the things I am going to inquire into.

TRIAL EXAMINER: All right.

Exhibits 4 and 5 will be received.

(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 4 and 5, were received in evidence.)

Q. (By Mr. Lyne) Mr. Friedman, are you familiar with those contracts? A. Yes.

Q. Directing your attention to Respondent's Exhibit 5, the contract dated January 1st, 1965, to the best of your recollection, when was that contract executed? A. About the first of June, I believe.

Q. Of 1965? A. That is true.

Q. When, to the best of your recollection, did negotiations on that contract commence? A. November 18, 1964.

Q. And who, if you know, took part in these negotiations on November 18, 1964? A. Mr. Vickers, Mr. Arthur--

31 Q. Is that Mr. John Vickers? A. Mr. John Vickers, Mr. Frank Arthur from St. Louis, our attorney, Mr. Archer and I.

Q. Is that the same Mr. Vickers who is present here? A. Yes.

Q. And to the best of your recollection, what took place on that occurrence?

MR. RICHARDS: I am going to object now to going into what took place in negotiations on November 18. The contract is in evidence as finally executed--

TRIAL EXAMINER: Well, Mr. Richards, the allegations which Mr. Lyne did not reckon himself, I suppose, is the statement in the Union's News Letter already in evidence that at the start of talks for a new union contract Nardis offered the union a fifteen cent an hour raise and a few other items.

I don't intend and I trust that Mr. Lyne doesn't intend to get into a blow by blow of the Nardis-Union negotiations.

If you can get to that point as quickly as possible, Mr. Lyne, I will overrule the objection, with the understanding that the inquiry is directed only to that.

MR. LYNE: Yes, sir.

TRIAL EXAMINER: All right.

MR. LYNE: Yes, sir, that is the only thing that is relevant, I believe.

32 Q. (By Mr. Lyne) My question, Mr. Friedman, was what, in general terms, occurred at that meeting of November 18, 1964? A. The November 18th meeting was purely for the purpose of-- the Union handed us their proposal and that is all.

Q. They were not discussed? A. They were not discussed.

Q. When was the next meeting? A. I believe on December 17.

Q. 1964? A. December 18th of 1964.

Q. All right, sir.

Now, in general what took place at that meeting? A. On December 17th we had submitted in writing our counter proposal and on December 18th a general discussion of the contracts followed.

Q. All right, who was present at that meeting? A. John Vickers, Yandell Rogers and I, I believe was all and the--our executive committee, our union executive committee from the plant.

Q. Was an offer at that time made by the company of an hourly increase in minimum wages? A. Yes, sir.

Q. What was the offer made by the company at that time? A. A five cent over-all increase the first year, a three cent over-all increase the second year and three cents the third year.

33 Q. Was any discussion at that time had concerning holiday pay?

A. There was no holiday pay offered at that time.

Q. Was anything discussed on that occasion about vacations?

A. Yes, our counter offer was one week after one year employment, two weeks after five years employment and three weeks after twenty years employment.

Q. All right.

Now, when was the next meeting following the December meeting?

A. The 21st and 22nd of January, 1965.

Q. Who was present at that meeting?

Was it different on the two days? A. No.

There was John Vickers, Yandell Rogers and I and I am not sure whether Fritz Siems was there or not.

Q. Rogers is the attorney? A. Our attorney.

Q. What, in general, took place at that meeting? A. I have to recall that from purely--I am not sure on anything but I believe we had offered at that meeting an increase of the minimum pay of seven and a half cents an hour; an over-all increase of five cents the first year, four cents the second year and four cents the third year.

34 TRIAL EXAMINER: I don't understand why you say seven and a half cents.

THE WITNESS: On the minimum.

TRIAL EXAMINER: I see, an increase on the--and then in addition to the increase in the minimum, a general--

THE WITNESS: That was not in addition, that was a general increase for whoever makes above the minimum.

TRIAL EXAMINER: I see.

Q. (By Mr. Lyne) Let's clarify that right now.

Do the majority of the employees at Nardis work on a piece rate basis? A. Yes, the majority covered under our contract do.

Q. Approximately how many? A. I would say approximately 140.

Q. I mean, percentage wise? A. Oh, percentage wise, possibly 80 to 85 per cent.

Q. Then the balance are paid on an hourly rate? A. That is right.

Q. Now, when you speak of a minimum, is it true that the minimum applies only to the piece workers? A. No, it is not.

Q. It applies to everybody? A. Everyone. That is a plant minimum across the board.

Q. All right.

Now then, do the piece workers, in addition to receiving a piece rate, receive additional compensation over and above the piece rate?

35 A. Yes, sir, they do.

Q. And what is that called? A. An adder.

Q. Is that an hourly rate? A. That is an hourly adder, that is right.

Q. In other words, they get whatever their piece rate is providing it is above the minimum and then so much an hour in addition to their piece rate? A. It is not provided if it is in addition to the minimum; it is just an adder in addition to their piece rate earnings.

Q. If an employee makes only the minimum does he get the adder also? A. That is a little hard to explain.

It depends on how much below the minimum.

In other words, at the present we have a twelve and a half cent an hour adder. If the girl makes a dollar forty, she will get the adder in order to bring her above the minimum but if she makes less than a dollar thirty-seven and a half, the adder disappears in makeup.

Q. In other words, if she is far enough below the minimum, the adder is used to bring her up to the minimum? A. It is not used to bring her up to the minimum, it is absorbed, absorbed by makeup.

Q. All right.

36

A. By the makeup pay.

Q. All right.

Now, going back to this meeting in January, the proposal of the company was seven and a half cents increase in the minimum? A. That is correct.

Q. Plus what? A. Five cents an hour the first year, four cents an hour the second year and four cents an hour the third year.

Q. Which was an adder? A. That is right.

TRIAL EXAMINER: An increase in the adder of five, four and four?

THE WITNESS: That is right.

TRIAL EXAMINER: All right.

Q. (By Mr. Lyne) Now, at that time was holiday discussed?

A. No, at that time what actually happened--we got hung up in negotiations on the holidays and we decided that we would just pass them by and see if we could settle everything else and then come back to it.

Q. What about vacations? A. The same there.

Q. Vacations and holidays both, it was agreed on in this meeting of January 21st and 22nd that you would pass until later negotiations?

37

A. That is right.

Q. All right, sir.

Now, when was the next meeting? A. I do not have the dates on this.

Q. All right.

At any time prior to January 26th had the company offered the union a fifteen cent an hour raise in minimum wages? A. No.

Q. At any time prior to January--now, I refer to January 26, 1965--at any time prior to January 26, 1965 had the company offered the union more holiday pay? A. No.

TRIAL EXAMINER: More than what?

MR. LYNE: More than they had in the existing contract.

THE WITNESS: No.

Let me clarify that.

MR. LYNE: All right.

THE WITNESS: When we passed the holidays and the vacations up we made a statement which was mutually agreed on that if we could agree on the wages we would pass it up and if we could agree on the wages we could possibly work out something on the holidays and vacations.

MR. RICHARDS: You mean work out increases?

THE WITNESS: We would get together somehow.

38 Q. (By Mr. Lyne) Now then, at any time prior to January 26, 1965 did the company offer to the union--beg your pardon, look favorably and I have an overt manifestation there, did they indicate by words or manner--did you indicate that the company favored granting two weeks paid vacations to anyone who had worked two years or longer?

A. No, we had not.

Q. What was the final agreement--that would be in Respondent's Exhibit 5?

TRIAL EXAMINER: The contract will speak for itself.

You can make your argument from the contract.

Q. (By Mr. Lyne) Now then, what business is Nardis Sportswear engaged in? A. Ladies sportswear, ready to wear. It is outer wear if you want to clarify it.

Q. Beg your pardon? A. Outer wear.

Q. All right.

It does not engage in the manufacture of ladies lingerie? A. No, it does not.

Q. Or sleep wear? A. No.

Q. Does it engage in the manufacture of any children's wear?

A. No.

Q. In general and I don't mean to detail it but what are the sales outlets for Nardis?

39

MR. RICHARDS: We object.

TRIAL EXAMINER: What is the materiality?

MR. LYNE: To show their noncompetitiveness.

TRIAL EXAMINER: Do you want to stipulate that they are not in competition?

MR. RICHARDS: I assume they don't--Russell-Newman doesn't manufacture ladies outer garments, is that correct?

MR. LYNE: That is correct.

TRIAL EXAMINER: Will that stipulation suffice?

MR. LYNE: It will if it goes to the point that they are noncompetitive with Russell-Newman.

MR. RICHARDS: We will stipulate to the conclusion. We all agree what Russell-Newman manufactures and what Nardis manufactures. Some woman may decide, if she has \$10 to spend whether she wants an inner garment and not an outer garment.

MR. LYNE: There is a lot of difference whether you market to Neiman-Marcus or J. C. Penney.

TRIAL EXAMINER: Can it be stipulated that Nardis Company and Russell-Newman are not competitors for the same sales market?

MR. RICHARDS: I don't know--

THE WITNESS: They are not competitors.

TRIAL EXAMINER: Mr. Friedman has indicated they are not competitive, is that correct?

THE WITNESS: That is correct.

40

MR. LYNE: I pass the witness.

TRIAL EXAMINER: Any questions, Mr. King?

MR. KING: No questions.

TRIAL EXAMINER: Mr. Richards.

CROSS-EXAMINATION

Q. (By Mr. Richards) If I understand your testimony correctly, Mr. Friedman, by the meeting of January 22nd, 1965 the union proposals on improvements in holiday pay and vacations had been discussed, is that correct? A. They had been discussed, yes.

Q. All right.

As a matter--I think--that is all I have.

TRIAL EXAMINER: Anything further?

REDIRECT EXAMINATION

Q. (By Mr. Lyne) Were there any meetings between January 22nd and January 26th, 1965 relative to negotiating with the union? A. I am not sure; I will have to check with our attorney.

Q. You know of no meetings? A. The last one that I recollect was the 22nd of January.

Q. All right.

TRIAL EXAMINER: Anything further?

MR. LYNE: No.

TRIAL EXAMINER: Thank you, Mr. Friedman.

(Witness excused.)

41 MR. LYNE: Mr. Vickers.

Whereupon,

JOHN VICKERS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lyne) Will you state your name, please? A. John Vickers.

Q. Where do you live, Mr. Vickers? A. Dallas, 7951 Woodshire Drive.

Q. By whom are you employed? A. International Ladies' Garment Workers Union.

Q. What capacity? A. I am an International representative.

Q. In that capacity has it been your area of responsibility to help the organizational campaign with the organizing of the employees of Russell-Newman Manufacturing Company? A. Yes, sir.

Q. Has that been true from the commencement of the campaign through now? A. Yes, sir.

Q. And you were present in the hearing room and heard Mr. Friedman of Nardis Sportswear testify, is that correct? A. Yes, sir.

Q. Is your recollection of the events as testified by him differ in any material respects? A. They don't differ with him.

I don't think he explained everything in detail.

Perhaps you don't want detail but I remember that we did discuss holiday pay, additional holidays for the employees and also we discussed two weeks vacation after two years of service.

The company had proposed three weeks vacation after 20 years of service and at that point I said to the company, I will make you a better offer than that.

We will accept two weeks vacation after three years service--after two years service.

At that time Yandell Rogers who is the company attorney said if we can work out our differences on wage increases, I am sure that we can settle this matter.

Q. With that exception is your recollection of the events substantially the same as that of Mr. Friedman? A. Yes, sir.

Q. Were there any negotiating meetings held between January 22nd and January 26, 1965? A. I don't know, sir. I don't believe but I couldn't state positively on that matter because I am not familiar with it.

MR. LYNE: Excuse me just a minute, Mr. Examiner.

43

TRIAL EXAMINER: All right.

MR. LYNE: I will state for the record that I am calling this witness as an adverse witness under Rule 43.

TRIAL EXAMINER: All right.

MR. RICHARDS: I am not sure that he is qualified as a 43(b) witness.

43(b), as I understand it, is drawn in the terms of a managing agent and Mr. Vickers is not a managing agent of this union.

TRIAL EXAMINER: I am not sure whether the Board has ruled on that issue or not.

It seems to me that it is perfectly clear, Mr. Richards, that whether or not Mr. Vickers is technically a managing agent within 43(b), he is a hostile witness for the Respondent in this case and I will permit the Respondent to examine, cross-examine him as such.

Go ahead.

Q. (By Mr. Lyne) Mr. Vickers, as I compare these two contracts with Nardis Sportswear it appears to me that the biggest differential in minimum pay is 10 cents and if I am in error, I would like for you to point out wherein I am in error and I will refer primarily to Page 7 of Respondent's Exhibit 4 and Page 31 of Respondent's Exhibit 5. A. Regarding minimum wages for what job classification, Mr. Lyne?

44 Q. Well, I again have reference to the representation in Respondent's Exhibit 2 that at the start of talks for a new union contract the Nardis Company had already offered the union a 15 cent an hour raise in minimum wages.

MR. RICHARDS: If the Examiner please, I am going to object, the contracts speak for themselves.

There was an increase in the minimum from a dollar forty to a dollar sixty or over the period of the contract, a twenty cent an hour increase in the minimum as appears on the face of the contract and I think the contract is the best evidence.

TRIAL EXAMINER: I think the contracts will speak for themselves and you can make your argument from them.

Certainly, in at least one sense of the term, Mr. Friedman testified that they offered over a three year span a thirteen cent increase in the adder. Now, this may not be the only item but, of course, the contract was executed months after the literature came out any way but I think Mr. Richards' point is well taken that you will both be making arguments to me based on your reading of the contract.

MR. LYNE: Well, if I could bring out by the testimony then that this is a selective matter and not applied to all employees but that for the most part the employees got a ten cent increase instead of fifteen cents, I am satisfied.

45 There are isolated places where the representation in the literature handed to Respondent employees is correct but for the most part, it is incorrect.

MR. RICHARDS: I am not sure I understand.

The minimum under the old contract was a dollar forty for operators for example over the three year term under this contract is a dollar sixty.

MR. LYNE: Let's get away from the offer as to selective employees.

The minimum hourly rate for all employees covered by this agreement will be a dollar forty per hour.

The new contract says effective as of the date set out below the minimum hourly earnings for all other workers not specifically covered by Paragraph 1 through 6 which are specialty shall not be less than the following: After three months experience dollar forty-seven and a half on January 1st, '65 and a dollar and a half on July 2nd, 1966.

Now, that covers the bulk of the employees.

TRIAL EXAMINER: Now, it seems to me, as I said before, that you will each be making this kind of argument to me and to later authority in your written presentation. I don't think it either seemly or productive to engage in a debate with Mr. Vickers as to the effect, for example, of the adder to which Mr. Friedman has already testified. That is also in a sense, in an arguable sense, a minimum wage.

46 MR. LYNE: Well, perhaps, I am approaching it from a different direction, Mr. Trial Examiner, than you would, were you in my position but I do think it's relevant that how many people come under this latter policy and how many people come under the other clause.

The representation would indicate to any normal person reading it that the company offered a fifteen sent an hour raise in minimum wages which would apply to everyone.

Now, I am attempting to bring out that that is not so and it is not so as to a material number.

MR. RICHARDS: Well, that simply is not true.

TRIAL EXAMINER: Pardon me, Mr. Richards. What is simply not true?

MR. RICHARDS: That this increase did not apply to a substantial number. It applied to virtually the entire plant, those who fall within, I assume, operators, pressers because this is what the plant runs, machine operators, those who operate machines.

Mr. Friedman has already testified that almost 90 per cent of his employees fall in this operators category.

THE WITNESS: He testified that 85 per cent of his people were on a piece rate basis and this is operators.

Q. (By Mr. Lyne) Is it your testimony that everybody that is on piece rate is an operator? A. No, this is not my testimony.

Q. Is it your testimony that every operator is on piece rate?

47 A. No, this is not my testimony either.

MR. LYNE: We haven't gotten anywhere then.

TRIAL EXAMINER: All right, I will permit you a few more questions along this line, Mr. Lyne, but I think basically that you are going to be quibbling with the witness over terms and that you can make the argument such as you have just made and they can make their response that they have just made in writing without developing it here.

Go ahead.

Q. (By Mr. Lyne) Referring to Schedule A of Respondent's Exhibit 5 there is a clause that applies to markers.

Approximately how many, percentage wise, of the employees at Nardis Sportswear are markers? A. To the best of my knowledge, two people.

Q. Two people.

How many total employees, approximately, are at Nardis?

A. Mr. Lyne, I can't answer you on that because I have no idea. I can give you an approximation.

Q. That is all right. A. About 160 employees.

Q. All right.

Now, the next category is cutters. Approximately how many cutters, percentage wise or number, are employed at Nardis?

48 A. Approximately eight cutters.

Q. Eight individuals? A. Yes.

Q. All right.

Now, the next category is cutter-learners, approximately how many cutter-learners, either individually or by percentages? A. I have only discussed wages on one cutter at the present time.

Q. One cutter? A. There may be more but this is all I have knowledge of.

Q. All right.

Now, the next category is cloth spreaders. How many in number or percentage wise of cloth spreaders at Nardis? A. I have no knowledge of that. I imagine it would be the same as the cutters.

Q. About eight? A. Yes.

Q. All right.

The next category is pressers, operators and final inspectors. Now, how many, approximately, either percentage wise or in number fall in that category? A. Pressers--probably nine pressers.

TRIAL EXAMINER: How many operators?

THE WITNESS: You asked for operators and final examiners?

49 Q. (By Mr. Lyne) It is operators and final inspectors, I think is the wording here. A. Operators and final inspectors, I wouldn't know the total amount of that.

Q. Could you give us a percentage, approximate? A. An approximate percentage of the total employees?

Q. Yes, sir. A. I would say 80 per cent of these people fall within this category.

Q. How much? A. Eighty per cent.

Q. Eighty per cent in that category.

Then there is finishers, bundlers, thread clippers and order fillers. A. I have no idea how many people are involved in this.

Q. Then there is a category for everybody else.

Now, how many fall in that? A. I think that category is pretty well covered. I don't think there is anybody else. We just put this clause in in case we missed someone.

(The documents above-referred to were marked Respondent's Exhibits Nos. 6 and 7 for identification.)

MR. LYNE: Can we stipulate that Respondent's Exhibits 6 and 7 are authentic copies of the contracts between Laredo Manufacturing
50 Company, Inc., with the Charging Parties for the respective dates which they bear?

MR. RICHARDS: May we be off the record for a moment, Mr. Examiner?

TRIAL EXAMINER: All right, off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. RICHARDS: It is my understanding that in response to Mr. Lyne's proposal, it is my understanding that the contracts represented by Charging Party which are Respondent's Exhibits 6 and 7, are what they appear to be, the effective agreements for the dates in question to cover the employees of Laredo Manufacturing and further that they also apply to the employees in Laredo, Texas at Amadee Manufacturing.

TRIAL EXAMINER: The stipulation as offered by Mr. Lyne is satisfactory?

MR. RICHARDS: Yes.

MR. KING: So stipulated.

TRIAL EXAMINER: All right, the stipulation is received.
You may proceed, Mr. Lyne.

Q. (By Mr. Lyne) Mr. Vickers, I hand you what the reporter has--I offer Respondent's Exhibits 6 and 7 for the purpose of showing the terms of the contracts.

TRIAL EXAMINER: There is no objection, I take it.
All right, the exhibits are received.

51

(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 6 and 7, were received in evidence.)

TRIAL EXAMINER: Mr. King, you can participate in the hearing without waiving your objections.

Q. (By Mr. Lyne) I hand you Respondent's Exhibit 6 and 7, Mr. Vickers, and ask you where you got those particular contracts, please?

A. Well, this agreement here, Exhibit No. 6, I received when I came to the Texas district.

Agreement No. 7 or Exhibit No. 7 which is this agreement was mailed to me from the St. Louis office after the contract was negotiated.

Q. And have they been in the union office as file copies since those times? A. Since the time I received them, yes.

Q. Respondent's Exhibit 7, approximately when did you receive that? A. That is a good question. I will have to think back.

I received it on or about July 6, 1964.

Q. All right.

Now then, do you have any copies of the union contract with Amadee Frocks? A. No, I haven't.

52

The Amadee Frocks firm has two copies of the agreement and the Central States Region has the additional copy of the agreement.

The language is the same in both agreements, Laredo Manufacturing Company and Amadee Frocks.

The agreements are the same for purposes of grievance procedures or settling problems--

Q. Before you go ahead, have you compared these two contracts?

A. Yes, I have.

Q. And do you know that they are identical, word for word, comma for comma, period for period? A. All except the first sheet and the first cover sheet on Amadee agreement says Amadee Frocks--I think it is comma Inc.

Q. With the exception of the change of names-- A. Yes, sir, the rest of it is identical.

Q. And you can testify to that, having compared them yourself?

A. Yes, sir.

Q. Is that true as to both Respondent's Exhibit 6 and Respondent's Exhibit 7? A. I can't testify to that because I was given this agreement and told that the same agreement applied.

Q. When you say this agreement, which agreement? A. That was No. 6. I was given this agreement when I came to the Texas District and told that Laredo Manufacturing Company agreement applied also to Amadee Frocks, that we negotiated the same agreement for both firms so I am taking my predecessor's word regarding the matter. I am sure this is true but I wouldn't want to say for certain.

Q. You are depending on what someone else has told you for that fact? A. Yes, sir.

Q. Did you engage in the contract negotiations on Respondent's Exhibit 7? A. No, sir, I did not.

Q. Do you know what the business of Laredo--is it manufacturing? A. Manufacturing Company.

Q. Do you know what business they are engaged in? A. Childrens wear.

Q. Is that outer wear? A. Yes, sir.

Q. And do they market under their own name or are they a contract operator? A. They are a manufacturing concern.

Again, I don't know what you mean by contractor with regard to--

Q. Well, do they have their own design department? Do they design their own line and market it under a trade name of their own?

54 A. No, the styles are designed by the parent company in New York.

Q. And that is Sam Landorff Company in New York, is that correct? A. Yes, sir.

Q. And this is a shop that merely manufactures a line of goods for the Sam Landorff & Company? A. Yes, sir.

Q. What about Amadee Frocks, what is their set up?

Are they a contract shop or--well, first tell us what they manufacture. A. They manufacture childrens wear too.

In the sense that Laredo Manufacturing Company is a contractor, so is Amadee Frocks only they contract from Joseph Love out of New York.

Q. Beg your pardon? A. Do you want me to repeat everything I said?

Q. Amadee likewise makes childrens outer wear? A. Yes, sir.

Q. And they do it for a New York concern? A. Yes, Joseph Love.

Q. Joseph Love.

But in that case, Joseph Love owns Amadee Frocks as Sam Landorff Company owns Laredo Manufacturing?

55 A. No, sir.

Q. This is strictly a contracting for a customer, is that correct?

A. Yes.

Q. Amadee Frocks is owned by local people in Laredo? A. Yes, sir.

Q. And they only have one customer? A. To the best of my knowledge but I don't know. I am answering the best I can.

TRIAL EXAMINER: That is immaterial.

Your point is that they are not making lingerie and I think that is perhaps established by now.

Let's go on to something else.

Q. (By Mr. Lyne) Now then, with Laredo Manufacturing Company, approximately how many of their employees are employed on a piece rate basis? A. Eighty-five to ninety per cent.

Q. And with respect to Amadee Frocks, approximately how many are employed on a piece rate basis? A. None.

They are all on an hourly basis.

Q. With respect to Laredo, is there a minimum that applies equally to the hourly employees and the piece rate employees? A. Yes, there is.

MR. RICHARDS: You mean a minimum hourly rate?

56 MR. LYNE: A minimum hourly rate.

THE WITNESS: Yes.

Q. (By Mr. Lyne) Is that minimum hourly rate identical for the hourly employees at Amadee? A. No, sir.

Q. Wherein does it differ? A. The base minimum is, yes, sir, I am sorry. I misunderstood your question.

Q. How do they differ? A. Well, Amadee differs in the respect that they have given the twenty-five cent wage increase to everyone.

Laredo Manufacturing Company, with the exception of a few people, have not.

Q. In other words, at Laredo the minimum has been raised, is that correct? A. They were raised at both factories.

Q. Which affected everybody at Amadee? A. Yes, sir.

Q. It affected the hourly people at Laredo? A. Yes, sir.

Q. It affected the piece workers at Laredo who could only make the minimum? A. I don't know what you mean by could only make the minimum.

57 Q. Well, a piece worker that is going above the increased minimum, that has no effect on his wages, does it? A. No, it hasn't.

Q. Right. A. But I think there is an increase negotiated along with that that would have an effect on it.

TRIAL EXAMINER: An increase in the piece rate was negotiated at the same time?

THE WITNESS: Yes.

TRIAL EXAMINER: All right, go ahead.

Q. (By Mr. Lyne) So what was the increase negotiated in the piece rate? A. As I understand it, the piece rate was increased about 13 per cent. The contract, I believe, only calls for six point something but the company realized that if they reduced or they raised the piece rate--I see here it is seven and fourteen hundred per cent--the company realized--

Q. Where are you looking now? A. I am looking at Schedule A on Page 32.

Q. All right. A. Shall I continue?

Q. Yes, sir. A. The company realized after our engineers had made a survey of the plant--our engineer was in the plant for about three or four days--he reported on the situation, said that a seven per cent increase would not be enough.

58 As a result, the company followed our engineer's recommendation and the wages were increased by approximately 13 per cent, an average of 13 per cent.

Q. You are referring to Paragraph B on 32? A. Right.

Q. Effective July 6, 1964 all time workers shall receive a compensating wage increase to offset the reduction in work hours from thirty dash seven and one dash half (thirty-seven and a half) hours per week to the thirty dash five (thirty-five) hour work week.

Effective July 6, 1964 all piece workers shall receive an increase in piece rates of seven and fourteen one hundredths (7.14%) per cent, is that correct? A. Yes, sir.

Article No. 2 is the one I am referring to.

Q. All right.

Now, you say that Article No. 2 has been further increased?

A. It amounts to around 13 per cent instead of seven per cent.

Q. Do you mean that the contract has been amended to increase that from 7.14? A. The contract hasn't been amended.

Our engineer made a survey of the plant and came up with the recommendation that 7.14 per cent would not be enough and that if they increased the rate only by 7.14 per cent they would only be kidding
59 themselves and therefore they wouldn't be getting production out of the plant that they desired.

Therefore, the company took our recommendation and they increased the rate by 13 per cent or around that.

Some rates weren't increased 13 per cent but the majority of the rates were.

Q. So Page 32 is not correct, is that what you are saying? A. No, I am not saying that.

I am saying--

Q. Well, are they giving 13 per cent or are they giving 7.14 per cent now? A. Well, let me phrase it in another manner.

They are not getting less than 7.14 hundredth per cent. In some cases they are getting much more than this in the piece rate earnings.

Q. Was this an oral agreement? A. Yes, sir.

Q. You don't have any such agreement like that over at Amadee?
A. No, sir, because all of the employees there are on a time work basis.

Q. The Schedule A on the Amadee agreement is not like Page 32 on Respondent's Exhibit--

60 A. Yes, sir, it is the same identical schedule only in regard to Amadee Frocks everyone receives a flat 25 cent wage increase.

MR. RICHARDS: Part of the problem may be because these things are in minimums, you understand, the way the contracts are drawn.

MR. LYNE: Well, B isn't a minimum.

MR. RICHARDS: No, I am talking about the hourly rates.

MR. LYNE: Yes, A under Schedule A is a minimum but B under Schedule A is to compensate for reducing the work week from thirty-seven

and a half to thirty-five hours and I assume since you have no piece rate workers at Amadee there is no Paragraph 2 in the Amadee contract, now, is that correct?

THE WITNESS: The paragraph is there but wouldn't apply.

TRIAL EXAMINER: What he is saying, Mr. Lyne, is that there is but it is a dead letter; it has no application.

MR. LYNE: It doesn't apply to the piece rate but it is there.

THE WITNESS: The paragraph is there. It is identical.

Q. (By Mr. Lyne) When was this determination made to increase 7.14 to approximately 13?

Was that made before or after January 26, 1965? A. I believe it was made in August of 1964.

I am not sure but I can get my records if you want a recess or I can get you a report from the engineer.

61 TRIAL EXAMINER: Well, you are certain it was before January of '65?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: All right.

Q. (By Mr. Lyne) When was Respondent's Exhibit 7 executed?

A. July 6, 1964, to the best of my knowledge.

Q. And when was the contract of Amadee Frocks executed?

A. Well, the wage increases went into effect the same day.

It wasn't signed until about a month later.

Q. In other words, about September of '64? A. That is right.

Q. It would be effective retroactive to January 1st, '64 in both cases? A. No, it wasn't retroactive.

Q. It was not retroactive? A. No, sir.

Q. Either one of them? A. It was July 6, 1964 that Laredo Manufacturing agreement went into effect and the Amadee agreement went into effect on the same day, the only difference being that the Amadee agreement wasn't signed until some time in September.

Q. Are we looking at the same agreement?

Mine says that the term was from January 1, 1964 to December 31, 1966.

62 Is that the one you are looking at? A. Yes, but in regard to retro-active pay, there wasn't any.

That was when the agreement was effective.

Q. My copy says it was made and entered into —

MR. RICHARDS: Well, he is talking about wage rates.

Look at the wage rates when they go into effect there on the schedule.

MR. LYNE: Well, excuse me. I was talking about the execution of the agreements.

TRIAL EXAMINER: He testified to that, Mr. Lyne. He said one was in July and the other in September.

Q. (By Mr. Lyne) The representation that it was made and entered into on December 2nd of '64 is not correct, is that your testimony? A. I imagine it was made and entered into on December 2nd of 1964.

To the best of my knowledge I believe it was signed on July 6, 1964.

I didn't negotiate this agreement. This agreement was mailed to me as I said before, I don't know.

The purpose of this is that we negotiated a three-year agreement and we didn't want the agreements to start until the effective date.

Q. Amadee Frocks does not manufacture ladies dresses? A. No, childrens wear.

63 Q. Now, you cite that in Laredo the union contract provides a 25 cent an hour wage increase for cutting department employees and that appears in Respondent's Exhibit 3 which is the handbill that was handed out.

Isn't it a fact that the cutters receive a dollar eighty-seven and a half now and that they received a dollar seventy-five an hour prior to January 26, immediately prior to January 26, 1965? A. I don't know the correct total, Mr. Lyne. I couldn't testify to that but I am sure it is in the record somewhere though.

If that is the record that you are reading from I am sure that is true.

Q. You have no reason to question that? A. No, sir, I have no reason to question it and I have no reason to confirm it.

Q. Where did you get the information that appears in Respondent's Exhibit 3 that they got an increase of 25 cents an hour? A. Well, in regard to this, shortly after this Laredo agreement was mailed to myself and shortly after it went into effect, I met with the manager of Laredo Manufacturing Company or you might call him the supervisor of Laredo Manufacturing Company whose name is Noran Greenberg. He is from New York and he is not from the Laredo Manufacturing Company.

64 At that time I discussed with Mr. Greenberg the differential between the time workers and the piece rate workers. I told him that we had a problem there and he said that some of the workers had already saw this and come to me regarding the matter and he said some of the people had come to him in regard to the matter to.

So then we sat down and tried to resolve the issue.

Mr. Greenberg, at that time, —

Q. Were you negotiating on the contract at this time with Mr. Greenberg? A. The contract had already been negotiated but we were cleaning up areas that weren't clear.

Q. Is Mr. Greenberg with Sam Landorff Company? A. Yes, sir, he is employed by Sam Landorff.

Q. Who, in turn, owns Laredo Manufacturing? A. Yes, sir.

I was pointing out to him the differential in the wages and that we might have problems on that, that many of his people had come to me about it and that we should try to straighten it out and he agreed.

At this time he was willing to give an additional 10 cents to four of the time workers who weren't covered by the agreement.

Q. What were their duties? A. They were floor help.

65 Q. To carry the bundles? A. Yes.

I told him that I didn't want an additional 10 cents for the floor girls at the present time because this wouldn't resolve the problem because when the second wage increase went into effect and I believe that is September 6th, 1965 or September 7th, that we would have the same problem all over again.

I told him at that time that what I would like to see him do, since the bundle girls or floor girls had gotten the identical wage increase and they were all making the same at that point, that I would like to see him wait until the operators got their second wage increase and then him give a wage increase to the floor help and to the people in the cutting department, to all time workers and not to just a segment of the time workers.

To this he agreed.

Later on we got into a discrepancy about this because the floor girls came to me and said I had knocked them out of a wage increase.

At that point I explained my thinking to the floor girls in the presence of Mr. Greenberg again and Mr. Greenberg wanted to give the increase to the floor girls at that time because the floor girls were threatening to go back on the machines because they saw they could make more under the piece rate system.

66 We persuaded the girls to stay where they were, to keep their same positions and that when the operators got a wage increase that they would get a wage increase too.

I was in Laredo on Labor Day for the Labor Day celebration —

Q. What year? A. 19 —

Q. This year? A. Yes.

At this time Carlos Gonzalez, the plant manager, came to me and said that the girls were threatening to leave the floor and go back to their machines, rather than work on the floor and that the —

Q. I think there was only one who was there — A. — and the workers in the cutting department were going to walk out if they didn't get the wage increase and he said, can I give the wage increase to the floor girls and one of the time workers in the cutting department and I said I would like to see you give it to all of the people in the cutting department.

Q. That was in September of this year? A. Yes, sir.

He said I might have some trouble getting all of these wage increases out of New York and I said well, in that case, you go ahead and give the wage increases to the floor help and to as many people as you can in the cutting

67 department and when I am down again we will talk about getting wage increases for the other two people in the cutting department and to the best of my knowledge this is what happened on that.

I know this is a long way in answering your question but this is what occurred.

Q. Mr. Vickers, my question was on January 26, 1965 you handed out a handbill that said in Laredo the union contract provides a 25 cent an hour wage increase for cutting department employees and I ask where you got that information? A. Well, I think I covered that earlier in my conversation.

I got this information from Mr. Greenberg. He agreed that they would pay it.

Q. On Respondent's Exhibit 6, I refer you to Paragraph 2 of that contract and ask you if those terms were complied with as set forth therein? A. I couldn't testify to this because I wasn't here at the time this agreement was in effect in 1962.

Q. Do you know what their hourly rate, that is, employees of Laredo Manufacturing Company were making at the end of the term of that agreement? A. They were making a dollar and a quarter an hour.

You are talking in regard to piece rate workers, aren't you?

68 Q. Well, the minimum rate which would apply to both the piece rate and the hourly rate? A. That was a dollar and a quarter.

Q. Well, that provides that it should be a dollar thirty, doesn't it? A. It may.

As I say, I couldn't testify to the fact as to whether it was put into effect or not because I wasn't —

Q. You just don't know? A. I just don't know.

Q. Who does know? A. I imagine Fred Siems would know if this was put into effect or not.

I know that when I come down here the minimum wage was a dollar and a quarter an hour and this is what the employees were receiving but evidently it wasn't in effect.

Q. Fred Siems is with the Charging Party, the International Ladies' Garment Workers? A. He is the director of the Central States Region.

Q. Where is he? A. St. Louis.

Q. Is that the nearest man that would know? A. Yes, sir.

In regard to this matter I think that Mr. Lambert told me at one time that the union and the company got into a dispute over what the wage should be since the federal minimum wage had been raised during this period of
69 time and as a result, the wage increases stayed exactly where they were.

Q. Carlos Gonzalez of Laredo Manufacturing Company would know, would he not? A. Yes, he would.

Q. But it is just arithmetic that if that contract in Respondent's Exhibit 6 had been complied with as is set forth that any wage increase would have a maximum of 20 cents rather than 25, isn't it? A. I haven't read the agreement; I wouldn't know.

Q. You haven't read which agreement? A. This one.

MR. RICHARDS: Well, I object to arguing with the witness.

The agreements speak for themselves as does his testimony.

MR. LYNE: I am trying to find out what they have done.

We subpoenaed the people that knew and that has been quashed on us now and now I am faced with a witness that says he doesn't know.

MR. RICHARDS: He says he knows what they were getting paid when he came here.

MR. LYNE: A dollar and twenty-five cents and the contract says they will get a dollar thirty.

TRIAL EXAMINER: All right.

MR. LYNE: He didn't comply with it or your statement is wrong.

70 Q. (By Mr. Lyne) Approximately how many of the employees in Laredo Manufacturing Company are operators? A. Eighty to eighty-five per cent. It may be more or less but I think it would be more.

Q. And there is only one cutter in Laredo Manufacturing Company, is there not? A. One cutter and an apprentice.

Q. And an apprentice supervisor?

Is his trade supervisor and cutter or cutter and apprentice?

A. Cutter and supervisor are the same person.

Q. O. K. and then one apprentice under him? A. Right.

Q. And the apprentice gets the minimum? A. Pardon me?

Q. The apprentice gets the minimum? A. In this case he would be covered by the minimum wage of the contract.

Q. He gets more? A. He is paid more than the minimum, I know that.

Q. Is that because he is on a piece rate basis? A. No, sir.

Q. That is something separate and apart from the contract, is that right?

71 A. I assume that we have negotiated wage increases over a year and that he has gotten a wage increase on top of his minimum wages so as a result he is higher than a dollar or whatever the minimum is in that group.

Q. There is no provision that the five cutters are apprentice cutters in the contract, Respondent's Exhibit 7? A. No, sir, there isn't, to the best of my knowledge.

Q. So if he is above the minimum and not on piece rate, what you are saying is that you have negotiated something over and above what is in the contract, isn't that correct? A. In that particular agreement I would say that down through the years he has gotten wage increases that we have negotiated in our agreement and as a result, his wages are higher.

Q. What is he making now? A. I don't know but I think it is a dollar eighty-seven. That is in the record too.

Q. What was he making on January 26th? A. I have no idea.

Q. When was his last increase? A. When the contract was negotiated.

Q. How much was that? A. I think it ran around 15 cents.

MR. RICHARDS: Before we get away from this, this colloquy on the record a moment ago, I would like to have it clear on the record what clause in this contract Mr. Lyne was referring to.

72

May I straighten this out now?

TRIAL EXAMINER: That is all right.

MR. LYNE: That is Respondent's Exhibit 6 and I was referring to Paragraph 2 on Page 4.

It provides an hourly rate to increase to a dollar fifteen on January 1st of '62 and then provides if a federal minimum wage increase occurs after January 1st of '61 it will be increased by a dime and six months after that by another nickel which should add up to a dollar thirty.

MR. RICHARDS: Well, it may or may not but I just wanted to be sure —

MR. LYNE: Well, it did where I went to school.

Q. (By Mr. Lyne) Mr. Vickers, were you in on any of the negotiations on Respondent's Exhibit 7, the Laredo Manufacturing Company's present contract? **A.** No, sir.

Q. Were you in on any of the Amadee Frocks' present contract?
A. No, sir.

Q. When did you come to Dallas? **A.** January of '63 or '64, '63.

TRIAL EXAMINER: We will take a short recess.

(A short recess was taken.)

TRIAL EXAMINER: On the record.

73 **MR. LYNE:** Would you mark these Respondent's Exhibits 8 and 9?

(The documents above-referred to were marked Respondent's Exhibits Nos. 8 and 9 for identification.)

MR. LYNE: Respondent's Exhibit 8 is the contract between Kabro of Houston, Inc., and the Charging Party dated November 1, 1960.

Respondent's Exhibit 9 is a contract between Kabro of Houston, Inc., and the Charging Party dated August 10th, 1964.

May we have the same stipulation on those two as we did on Respondent's Exhibits 6 and 7?

MR. RICHARDS: Yes, we may have.

I notice that Respondent's Exhibit 8 appears to have been with Local 214 but we can stipulate that they were the effective agreements during the period in question.

TRIAL EXAMINER: All right, that stipulation is received.

MR. RICHARDS: For the record can we have identified which is which?

TRIAL EXAMINER: Yes.

MR. LYNE: The old one is the 1960 one, November 1, 1960.

No. 9 is the August 10, '64.

Q. (By Mr. Lyne) Mr. Vickers, I hand you Respondent's Exhibit 8 and 9 and ask you if you had anything to do with negotiating either one of those contracts?

74 A. No, sir.

TRIAL EXAMINER: I take it you are offering them into evidence?

MR. LYNE: Yes.

I offer Respondent's Exhibits 8 and 9 for the purpose of showing the terms of the contracts.

TRIAL EXAMINER: All right, they will be received.

(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 8 and 9, were received in evidence.)

Q. (By Mr. Lyne) Referring to Respondent's Exhibit 9 which I think will show that it was executed as of August 10, 1964, I notice at the top of the facing page there is a date August 12, 1965.

Do you know the significance of that date? A. No, sir, I don't.

Q. Do you know when Respondent's Exhibit 9 was executed? A. By executed I imagine you mean signed?

Q. Actually signed. A. This was signed about a month ago. I don't know what day but it was approximately a month ago.

Q. Approximately a month ago? A. Yes.

Q. Do you know when it was reduced to writing? A. No, sir, I don't.

75 Q. Who would know? A. The Regional Director, Frederick Siems.

Q. In St. Louis? A. Yes, sir.

Q. And who with the company? A. Abraham Teffer.

Q. Where does he live? A. New York.

TRIAL EXAMINER: If you are questioning as to whether you subpoenaed him or not, my recollection is that you did not.

The subpoenas that I recall were direct to Mr. Fischons (phonetics) of Lilly Lynn, Mr. Klein of Bobby Brooks but not to Mr. Teffer.

Q. (By Mr. Lyne) Do you know who owns Kabro of Houston?

A. Lilly Lynn.

Q. And the president of Lilly Lynn is Mr. Fischons (phonetics), is that not correct? A. I am not positive.

Q. You don't know that? A. No, sir, I don't know for certain.

I have met Mr. Fischons (phonetics) and I have met his son but I don't know what their connections are with the firm.

When it comes to matters regarding the contract I speak to Abraham Teffer and not either one of the Fischons (phonetics).

Mr. Teffer is the gentleman that signed this agreement.

MR. LYNE: May we go off the record for a minute?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

Go ahead, Mr. Lyne.

Q. (By Mr. Lyne) In Respondent's Exhibit 2, Mr. Vickers, it is stated in Houston, Texas the new union contract with Kabro, Inc., provides a minimum wage of a dollar sixty an hour and a 25 cents an hour general increase for time workers.

Where did you get this information when you wrote Respondent's Exhibit 2 or whenever Respondent's Exhibit 2 was written? A. I was in the negotiations of the agreement and these wage increases were put into effect.

Q. Negotiations on what agreement? A. The agreement isn't here. It was an agreement with Kabro of Houston.

MR. RICHARDS: Not to get this on. Do you all know the facts — you know that Kabro sold out — here is what happened and there is no big secret about it.

We negotiated an agreement with Kabro of Houston, Inc., the union did. The owner of it then, Mr. Kaplan, was it, became ill and decided to no longer conduct the business himself and sold it out to Lilly Lynn, if I recall correctly.

This agreement for sale or this sale of Kabro to Lilly Lynn occurred after negotiations of the agreement with Kaplan but before the agreement with Kaplan was reduced to writing and signed by the parties.

Following the sale to Lilly Lynn negotiations were continued with Lilly Lynn and the union with the result of what is now Respondent's Exhibit 9 was consummated.

Now, that is, I think, approximately what transpired.

THE WITNESS: Yes, sir.

MR. RICHARDS: Part of the problem is, I take it, that there was this death, not death but the sale of Kabro of Houston to Lilly Lynn.

Q. (By Mr. Lyne) When did the sale take place? A. I believe it was August 3rd of 1964.

Q. Do I understand from your testimony that you did have something to do with negotiating one of the Kabro contracts? A. I sat in on negotiations.

Q. Which one? A. It was the agreement before this one that was never signed that Mr. Richards referred to previously.

Q. The agreement preceding Respondent's Exhibit 7? A. Yes.

TRIAL EXAMINER: No, Exhibit 9.

78 There is an agreement, apparently, Mr. Lyne, according to Mr. Richards' representation, there is an agreement which, in terms of your chronology, might have been Respondent's Exhibit 8-1/2, namely, an agreement between 8 and 9 which was negotiated but never executed because of the sale of the company and it is that agreement, according to the witness, to which he had reference in his literature which is in issue here, is that it, Mr. Richards?

Is that what you have been trying to tell us?

MR. RICHARDS: Yes.

TRIAL EXAMINER: All right.

Do you understand that, Mr. Lyne?

MR. LYNE: Yes, sir, I think I do.

MR. RICHARDS: As I say, before — our office was due to prepare the thing but before it ever got prepared they sold the business.

TRIAL EXAMINER: When was this business sold?

MR. RICHARDS: In the summer of '64.

TRIAL EXAMINER: Then why was a literature put out in January of '65?

MR. RICHARDS: Because these wage increases went into effect in July.

TRIAL EXAMINER: You mean, the agreements were in effect at Kabro but —

MR. RICHARDS: The thing had never been put in writing.

79 TRIAL EXAMINER: You were operating under the contract but you hadn't executed it?

MR. RICHARDS: Right.

TRIAL EXAMINER: All right.

MR. LYNE: There was no contract other than Respondent's Exhibit 8 although there had been negotiations on one until Respondent's Exhibit 9 was executed?

MR. RICHARDS: No, that is not right.

MR. KING: I object to that.

MR. RICHARDS: This is argumentative. The point is there was a negotiated agreement under which the wage increases were put into effect but never executed because before the execution of the agreement took place Lilly Lynn purchased Kabro but when Lilly Lynn purchased Kabro they kept in effect the wage increases that had gone into effect by the earlier agreement with Kabro and, in effect, finally increasing them somewhat or made some changes in the final written agreement here in evidence as Respondent's Exhibit 9.

I think this witness is qualified to testify as to what the contract they made with Kabro did provide, the one that was adopted by Lilly Lynn because he participated in those negotiations.

MR. LYNE: Well, Respondent's Exhibit 9 is effective August 10th, 1964.

MR. RICHARDS: I read that myself on there. That was the day they purchased Kabro.

MR. LYNE: My question was, was there any contract between Respondent's Exhibit 8 and Respondent's Exhibit 9.

MR. RICHARDS: The answer to that is that there was an agreement reached by the parties but never reduced to writing.

MR. LYNE: Mr. Examiner, can I have Mr. Richards on the stand and excuse Mr. Vickers?

MR. RICHARDS: Sure you can have me on the stand.

MR. LYNE: I mean, we are getting more of his testimony than Mr. Vickers and if he knows more about the subject —

MR. RICHARDS: You are asking legal conclusions about —

TRIAL EXAMINER: All right, gentlemen, if you are being factitious —

MR. LYNE: No, I am not.

TRIAL EXAMINER: I am not criticizing you. If you want Mr. Richards on the stand right now we will excuse Mr. Vickers.

MR. LYNE: His statements indicate that he has a much greater knowledge of this subject matter than Mr. Vickers —

TRIAL EXAMINER: That is right.

MR. LYNE: And while we are on it —

TRIAL EXAMINER: All right, do you wish to excuse Mr. Vickers —

MR. LYNE: Yes, I would like to excuse Mr. Vickers for the moment until we get through with this subject and have Mr. Richards —

81 TRIAL EXAMINER: Might I suggest, Mr. Lyne, that you finish with Mr. Vickers' testimony on any other contracts or do you want to go right into Kabro now?

MR. LYNE: I would like to keep Kabro in its context here.

TRIAL EXAMINER: Very well, you may step down, Mr. Vickers.

(Witness temporarily excused.)

Whereupon,

DAVID R. RICHARDS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

TRIAL-EXAMINER: Go ahead, Mr. Lyne.

DIRECT EXAMINATION

Q. (By Mr. Lyne) Mr. Richards, you have mentioned a contract that was negotiated but not executed between the Charging Party and Kabro of Houston.

Were you one of the attorneys, at least, representing the Charging Party during those negotiations? **A.** Our firm did not participate in the negotiations but our firm did represent the union during that period of time but we did not actually participate in the negotiations.

We had certain instructions given to us by the Charging Party as a consequence of the negotiations.

82 **Q.** All right, before the sale of Kabro to Lilly Lynn was there an agreement that was reached between Kabro and the Charging Party?

A. It is my understanding that we were instructed sometime during the summer of 1964 to put in written form a completed written document, a collective bargaining agreement that had been negotiated between Kabro and the union.

This was and my further information is that before that document was ever executed —

Q. Let's just take one point at a time.

Who was instructed in your firm to prepare such a written agreement?

A. It wasn't I and it was either one of two persons. It was either Charles Morris and I think that is who it was but it may have been Fred Wells.

Q. Who gave the instructions? **A.** I am not aware of who gave the instructions.

Q. All right, so you personally do not know what the contents of that purported agreement would be, is that correct? **A.** I have no personal knowledge of this contract.

Q. Do you know whether a draft was ever prepared? **A.** I think a draft was prepared.

Q. Is it in existence now? **A.** I couldn't tell you but I assume that it may well be.

Q. Who would know?

83 A. I know as well as anyone. If it still exists I probably have as much knowledge of it as anyone.

Q. Did you have anything to do with the drafting of Respondent's 9 or did anybody in your office have anything to do with it? A. No.

Q. Do you know who did draft it? A. No.

Q. Do you know whether they had the notes or memorandum in writing of the prior negotiated agreement when it was prepared? A. You mean, the person who drafted Respondent's 9, if they had any notes or memorandum?

Q. Yes, sir. A. I do not know that.

Let me say that it is my understanding, if you are interested, that that was handled out of New York rather than out of Dallas.

Q. During the time of these negotiations and events in the summer of 1964 was Respondent's Exhibit 8 still in force and effect? A. My understanding —

Q. Do you want to look at it? A. It is my understanding that we were advised that the new agreement with Kabro, the one we were supposed to draft, had been implemented in terms of whatever wage increases it contained so

84 to that extent the new agreement was in effect, the one that was never finally executed.

Q. This is what you were informed? A. Informed but I have no personal knowledge.

Q. But I believe you are familiar with Respondent's Exhibit 8 and it provides a term with an automatic year to year renewal clause? A. I assume that if it is like most collective bargaining agreements, it provides automatic renewal unless —

Q. All right.

Now, my question was do you know whether it was still in force and effect up to the point your firm received instructions? A. I think, as a matter of law, it could not have been in effect because there had been negotiations for a new agreement and presumably, a reopening under the old contract and, as a matter of contract law, common contract law, it was clearly gone and probably a matter of labor law, I am sure that many of its conditions were continued forward.

MR. LYNE: I believe that is all.

MR. KING: No questions of Mr. Richards.

TRIAL EXAMINER: Thank you, Mr. Richards, you are excused.

(Witness excused.)

Whreupon,

JOHN VICKERS

resumed the witness stand and, having been previously duly sworn, was

85 examined and testified further as follows:

DIRECT EXAMINATION (continued)

Q. (By Mr. Lyne) It is stated in Respondent's Exhibit 2, Mr. Vickers, that a vast majority of the more than 200 workers at Kabro earned far more than a dollar sixty an hour.

From whence did you get this information? A. My personal knowledge of servicing the plant.

Q. Of examining the payroll records? A. Yes, sir.

Every month we get a quarterly average of the employees' wages and by this quarterly average we know what the workers are —

Q. All right.

Approximately how many of the workers at this plant of Kabro are on piece work? A. Approximately 85 to 90 per cent.

Q. Now, when you speak of a 25 cent an hour general increase for time workers, does this apply only to the time workers or was a minimum for the piece workers also raised? A. The minimum for the piece workers was also raised in April 9th or on April 9th of '64.

Q. On April 9th of '64? A. Yes.

Q. Was this pursuant to an oral agreement? A. Right, we had an oral agreement.

86 Q. Would Respondent's Exhibit 8 have terminated when you commenced negotiations on the new agreement and you were in the process of negotiating? A. Yes, sir.

Q. Now, at Kabro is there also one of these adders on top of the piece work rate? A. Yes, sir.

Q. What does that run? A. Well, the adders are per cent adders and they are compounded.

The first adder is three per cent and then the sixteen per cent on top of that and on top of the sixteen per cent goes six and a half per cent and then under the new agreement we negotiated an additional seven per cent added to this, effective in 1966, I believe, July 1st, making a total adder under the current agreement, effective July 1st of 1966, 32.5 per cent to the total piece rate earnings.

Q. Now, this only applies to the piece rate?

Your schedule for time people is so much per hour on a given time?

A. Yes, sir.

Q. What does Kabro manufacture? A. Dusters.

Q. Generally what kind of dresses, house dresses? A. Sportswear, two-piece garments.

87 MR. LYNE: Can we stipulate that Kabro is noncompetitive with Russell-Newman?

TRIAL EXAMINER: In the sense that we have been using the term they don't manufacture the same article?

MR. RICHARDS: They don't manufacture ladies lingerie?

THE WITNESS: No.

MR. KING: We can so stipulate.

MR. RICHARDS: Yes.

TRIAL EXAMINER: So stipulated.

It will be stipulated that Amadee and Laredo are also not competitors of Russell-Newman, in the sense that Russell-Newman manufactures a different type garment.

Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

Q. (By Mr. Lyne) As a practical matter, Mr. Vickers, with regard to Respondent's Exhibit 9, are the cutters included in those employees actually engaged in the making of garments? A. I don't understand that question, Mr. Lyne.

Q. The exclusory clauses are rather extensive in this contract and there are terms that I am not too familiar with.

Included in the unit are employees actually engaged in the making of garments? A. Yes.

Q. Are the cutters included?

88

A. They are included in making garments.

MR. RICHARDS: If you will refer to Schedule A, they are specifically provided for in Schedule A, Page 42.

MR. LYNE: May we have this marked as Respondent's Exhibit 10?

(The document above-referred to was marked Respondent's Exhibit No. 10 for identification.)

MR. LYNE: Can it be stipulated that Respondent's Exhibit 10 is an authentic copy of the agreement between the Charging Party and Bobby Brooks, Inc., applying to Helena Garment Company and Lepanto, L-e-p-a-n-t-o Garment Company dated January 1, 1963?

MR. RICHARDS: May we go off the record for just a minute?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

The stipulation offered by Mr. Lyne is acceptable?

MR. RICHARDS: Respondent's 10 is the collective bargaining contract covering the operations provided in its recognition clause during the period in question and is a true copy, a true and correct copy of said agreement.

MR. KING: So stipulated.

MR. LYNE: We offer Respondent's Exhibit 10 for the purpose of showing the terms.

89

TRIAL EXAMINER: It will be received.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 10, was received in evidence.)

Q. (By Mr. Lyne) Mr. Vickers, I hand you what has been marked as Respondent's Exhibit 10 and ask you for what period of time that contract has been in effect? A. Mr. Lyne, I will have to look at the date on the contract.

Q. Yes, sir, please do.

MR. RICHARDS: Well, I will object. The contract speaks for itself.

TRIAL EXAMINER: The contract speaks for itself.

If all he is going to read is what is in the contract, let's go on to the next question.

MR. LYNE: Well, I want to find out if this contract was terminated at a given time for negotiations on the unwritten subsequent contract.

TRIAL EXAMINER: Do you understand the question, Mr. Vickers? Do you know when this contract terminated or can you find that?

THE WITNESS: We write the agreements — I suppose it is '63 to '66 but I don't know. It usually says in the back where it is signed.

It terminated, according to this agreement on the 31st day of December 1964.

90

Q. (By Mr. Lyne) All right.

We have had some discussions earlier in this hearing and I don't recall whether it was on the record or not but there has been negotiated a subsequent contract to Respondent's Exhibit 10 with Bobby Brooks, is that correct? A. Yes, sir.

Q. But that contract, the subsequent contract, has not been reduced to writing? A. No, sir, it hasn't.

Q. How do you know it hasn't been reduced to writing? A. I talked to the Regional Director, Mr. Siems when he was down here about a month ago and he said they were still in the attorney's office in New York and it hadn't been mimeographed or written at that time because I asked him for a copy of it.

Q. In other words, you were attempting to get the material to comply with the subpoena by which you are here? A. Yes, sir.

Q. And in the course of that you discovered that the subsequent contract had not yet been reduced to writing? A. Yes, sir.

Q. Did you make any inquiries of your superior as to the terms of the negotiations or what had been agreed to that would be included in the subsequent agreement when it is reduced to writing?

91 A. I asked him what the terms of the agreement were and he said, well, didn't you get copies of the Justice issue and I said yes, sir. He said well, it is all spelled out in the Justice Newspaper.

Q. And the Justice Newspaper is a publication by the ILGWU?

A. Yes, sir.

MR. LYNE: Will you mark this, please?

(The document above-referred to was marked Respondent's Exhibit No. 11 for identification.)

Q. (By Mr. Lyne) I show you what has been marked by the reporter as Respondent's Exhibit 11 and ask you if that is the article referred to in this issue of the Justice Newspaper? A. The top of the Womens Wear Daily — this is the Justice issue here.

Q. Now, you say the one that I handed you which is 11 is —

A. A trade paper.

Q. A trade paper and Respondent's Exhibit 12 is the one from —

A. The Justice Newspaper, my union newspaper.

(The document above-referred to was marked Respondent's Exhibit No. 12 for identification.)

Q. (By Mr. Lyne) Now, had you seen the article, Respondent's Exhibit 12?

92 A. Yes, sir, I have.

Q. When was about the first date that you saw that, approximately the date it was published? A. Probably two or three days after that. I get an advanced copy of the Justice.

Q. Was that the source of your knowledge of what was included in the Bobby Brooks contract? A. No, sir, I had serviced the West Helena and Lepanto shops of Bobby Brooks and I was familiar with some of the conditions.

Q. Well, this is the master contract negotiated in New York, is it not? A. Yes.

Q. It applies to all Bobby Brooks plants? A. Yes, sir.

Q. Are the local plants kept up to date on negotiations in New York?

MR. RICHARDS: I think you all are misunderstanding one another. He is talking about, I think, the old contract.

MR. LYNE: I am talking about the new contract.

TRIAL EXAMINER: How did you know the terms of the new contract when you put out your literature?

THE WITNESS: I used the Justice article.

TRIAL EXAMINER: All right.

93 Q. (By Mr. Lyne) That was the source of your information when you, when Respondent's Exhibit 2 was prepared, is that correct?

A. Yes, sir.

Q. Was there anything other than Respondent's Exhibit 12 used as source material for Respondent's Exhibit 2? A. Only my knowledge of the Bobby Brooks agreement that I had had before when I was servicing the shops.

Q. Which involved the old contract? A. This agreement here.

MR. LYNE: There is no need to offer 11. I will just offer 12.

MR. KING: No objection.

MR. RICHARDS: No objection.

TRIAL EXAMINER: 12 will be received.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 12, was received in evidence.)

MR. RICHARDS: 11 will be withdrawn, I presume?

MR. LYNE: I would just as soon withdraw 11.

TRIAL EXAMINER: All right, 11 is not offered.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 11, was withdrawn.)

Q. (By Mr. Lyne) Do you know what the effective date of the new Bobby Brooks contract is? A. No, sir, I don't.

94 MR. LYNE: May we go off the record?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. LYNE: I pass the witness.

TRIAL EXAMINER: Any questions?

MR. KING: Yes.

CROSS-EXAMINATION

Q. (By Mr. King) I want to direct your attention to Respondent's Exhibit 2, Mr. Vickers, Paragraph 3, in which it states that the Bobby Brooks contract provides for operators three ten an hour, a minimum wage of one seventy-three an hour for operators and three ten an hour for cutters.

Can you of your own personal knowledge tell us how that figure of three ten an hour for cutters was determined? A. To my knowledge, at the Bobby Brooks plant in West Helena, the cutters there were making two seventy-five an hour and they added increases according to the Justice article which brings it up to three ten.

Q. What, specifically, are you referring to in the Justice article?
A. Wage increases — I will have to review this for a while.

Q. Well, I want to direct your attention to the wage increases, the first column in the Justice article which says piece workers, cutters and spreaders —

95 A. This apparently is what we were referring to at that time.

Q. All right.

Now, how would you arrive at the figure of three ten an hour?

A. First, you would take five per cent of \$2.75 and on top of that total you would take four per cent of that. On top of the four per cent total you would take three per cent of that because the interest was compounded.

Q. Well, I direct your attention to the article again and it says below wage increase-12 per cent it says the total cumulative increase will be about 13 per cent. A. Yes, sir.

Q. Is that the figure that you used? A. I used the 13 per cent.

Q. And it is 13 per cent times what figure? A. Two seventy-five.

Q. Where did you get the two seventy-five figure? A. This comes from my personal knowledge of the cutters in the Bobby Brooks plant who at this time had a minimum wage of two seventy-five.

I don't want to mislead you here. There are no cutters in Lepanto to the best of my knowledge. They were going to put in a cutting department there but I don't know if they have put in a cutting department but I

know the minimum wage at one Bobby Brooks plant is two seventy-five.

96

Q. All right.

Now, how about the figure and directing your attention again to Respondent's Exhibit 2, the two oh five an hour for spreaders.

Can you tell me, based upon the Justice article, how you arrived at that figure or how that figure was arrived at? A. To the best of my knowledge, we also used the same logic in determining this.

If my memory serves me right, the spreaders minimum wage was a dollar eighty cents an hour, minimum wage was a dollar eighty cents.

Understand when I mentioned to you the minimum — some people make above these but this is the base.

Then, we added this per cent to a dollar eighty and came out with this figure.

Q. Now, I want to direct your attention, once again, to this Kabro agreement which I believe the testimony was, arrived at but never executed.

Are you familiar with the terms of that agreement? A. Yes, sir. I don't know if I recall them all in detail but I am familiar with the terms.

Q. Can you testify — well, let me withdraw that.

Were any of the terms put into effect? A. They were put into effect April 9, 1964.

97

All right.

Now, with regard to wages can you testify what terms, of your own personal knowledge, were put into effect on April 9, 1964? A. The operators minimum wage went to a dollar sixty plus they got a six and five tenths per cent increase on top of the other adders they had before which was sixteen and three.

In addition to that the people in the cutting and shipping department received a 25 cent wage increase. This was broken down ten the first year, ten the second year and five the third year. This was what the agreement provides for.

Q. Now, was there any reduction in — A. Yes, sir, there was a reduction in the work week from 40 hours to thirty-seven and a half.

The reduction in the work week was to take place immediately but we allowed the company to work, the employees, the first half an hour at straight time rather than time and a half.

Q. And this — do you know what the hours were before and after the reduction? A. After the hours were reduced and I am referring to April 9, 1964, the standard work day was still 40 or the standard work day was still eight hours per day. The only difference, they were paid on the basis of a thirty-seven and a half hour week or a seven and a half
98 hour day but they actually worked eight hours a day.

Q. Is it correct that they were paid overtime for everything over thirty-seven and a half hours? A. No, sir, that is not correct.

Q. What was the overtime computed on?

When did they get paid overtime? A. The overtime was computed on the basis of forty hours.

In effect, they received a wage increase but the hours weren't reduced except in terms of the agreement. They were reduced in the agreement.

MR. LYNE: Now, are we still talking about this agreement that wasn't reduced to writing?

MR. KING: That is correct.

Q. (By Mr. King) Now, assuming — maybe if I could take a concrete example you can explain it to me better.

Assuming an employee was getting a dollar and sixty cents an hour, what would have been the effect of this agreement that you reached in reducing the work week? A. The worker would receive a 6.5 per cent piece rate increase if they were a piece worker. If they were an hourly worker, it would have been 10 cents an hour the first year, 10 cents an hour the second and 10 cents an hour the third.

TRIAL EXAMINER: Five cents an hour.

THE WITNESS: Five cents, I am sorry.

99 Q. (By Mr. King) My question is what effect, if any, would this reduction in the work week from forty to thirty-seven hours have on pay? A. If the hours were actually reduced — this is somewhat confusing.

If the hours were actually reduced, they would — would you rephrase that?

TRIAL EXAMINER: We're getting mixed up.

Let me try my hand at it.

At the time before the contract was executed under the old contract, the standard work week was forty hours?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Under the new contract the work week was thirty-seven and a half hours?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: An employee — at the same time the minimum wage was raised from — to a dollar sixty, is that right?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: From a dollar fifty?

THE WITNESS: No, sir, to my recollection, sir, it was from a dollar and a quarter to a dollar sixty but I am not positive on that.

The old agreement would probably have the minimums in it.

100 TRIAL EXAMINER: When — taking one of these persons receiving the minimum, the new minimum, a dollar sixty, he would receive that for the first thirty-seven and a half hours of work, correct?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Supposing he worked between thirty-seven and a half to forty hours, what would he receive for those two and a half hours, an overtime rate or the dollar sixty?

THE WITNESS: Perhaps I am confusing everybody. Let me explain it in this term.

Although the hours were actually reduced in writing on those days we allowed the company to work them, the half hour every day and not pay time and a half.

TRIAL EXAMINER: So they received straight time pay for forty hours, five days a week?

THE WITNESS: Yes.

TRIAL EXAMINER: Although the contract calls for a thirty-seven and a half hour week and that was standard and that was what was intended to be worked, is this correct?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: When they worked overtime up to forty hours, the employees still received no overtime rate, is that right?

THE WITNESS: This is correct in the sense of over forty hours.

101

TRIAL EXAMINER: Yeah.

THE WITNESS: If they worked over eight hours in one day it was overtime.

TRIAL EXAMINER: I see.

All right.

Any other questions?

Q. (By Mr. King) I want to direct your attention to --

TRIAL EXAMINER: We will take a 10-minute break.

(A short recess was taken.)

TRIAL EXAMINER: On the record.

Q. (By Mr. King) Now, I want to direct your attention to Respondent's Exhibit 7.

MR. LYNE: Which is 7?

MR. KING: 7 is the second Laredo contract, I believe.

TRIAL EXAMINER: That is correct.

Q. (By Mr. King) -- and specifically to Schedule A, Page 32, Paragraph D(1) and ask you to explain how, if you know, how that wage increase there referred to was computed? A. Yes, in regard to Schedule A, D, Item No. 1, when the hours were reduced the people made the same amount of money in thirty-five hours as they formerly made in thirty-seven and a half hours.

MR. KING: No further questions.

TRIAL EXAMINER: Do you have any questions?

MR. RICHARDS: Two or three, that is all.

102 Q. (By Mr. Richards) Mr. Vickers, I think you testified, did you not, that at Amadee Frocks in Laredo, all of the employees are hourly rated, is that correct? A. Yes, sir.

Q. Can you tell me whether or not all employees, bargaining unit employees got the full twenty-five cent per hour wage increase under the contract term? A. Yes, sir, they did.

Q. Fifteen cents — A. Fifteen and ten.

Q. Fifteen at the initial implementation of the contract and ten cents in September? A. Yes.

Q. That included cutters too, did it not? A. Yes, sir.

Q. Now, let's see, the Amadee agreement and the Laredo agreement went into effect in July of 1964, is that correct? A. July 6th, I believe.

Q. And once again, turning to Amadee, was it your agreement at the time or whenever you reached your agreement with Amadee, that the full twenty-five cents per hour increase would be paid to all workers?

A. Yes, sir.

MR. LYNE: Now, we are going to object on the grounds that the contract speaks for itself.

103 TRIAL EXAMINER: Let me have the question again, please.

MR. RICHARDS: Well, he has testified that at Amadee Frocks the twenty-five cent an hour wage increase was spread over two periods and applied to all employees including cutters.

TRIAL EXAMINER: The contract is in evidence or the Laredo contract is in evidence and the Amadee contract is identical.

MR. RICHARDS: At Amadee, I simply want to clear up the application with respect to cutters and then it occurred to me that it might later be argued that this agreement was reached to apply to the cutters at some point after —

Do you want the witness out of the hearing room?

TRIAL EXAMINER: No. Do you, Mr. Lyne?

MR. LYNE: No.

MR. RICHARDS: After this proceeding was instituted and so I simply wanted to clear up when they reached the agreement that the full twenty-five cent per hour increase —

TRIAL EXAMINER: I will permit the question.

Do you know when the increase was implemented?

MR. RICHARDS: Not implemented. It was implemented, I take it, on two dates, July 6 first and September of '65 second, is that correct?

THE WITNESS: Yes, sir.

104 Q. (By Mr. Richards) When did you reach the agreement with Amadee that the twenty-five cent an hour wage increase would apply to all employees?

Was it at the time of negotiation of the contract or shortly thereafter?

A. It was shortly thereafter, a week or two weeks after and at the same time I met with the people of Laredo Manufacturing Company.

Q. July, August or September of '64? A. Yes, sir.

Q. By the way, now, your handbill referred to Kabro, Amadee, Laredo and Nardis garment manufacturing plants. All of these are in the State of Texas, is that correct? A. Yes, sir.

Q. I think it is correct to say that at the time this handbill was put out these were the only garment plants covered by the LG contracts in the State of Texas? A. At that time, correct.

MR. RICHARDS: That is all I have.

TRIAL EXAMINER: Anything further?

REDIRECT EXAMINATION

Q. (By Mr. Lyne) I am trying to pin it down.

Is it Amadee that has no cutters or Laredo that has no cutters?

A. Both plants have cutters.

Q. What plant was it that has no cutters?

105 A. Both plants have cutters.

MR. RICHARDS: West Lepanto, I mean, I think that Bobby Brooks —

THE WITNESS: Lepanto has no cutters that I know of. They may have cutters now.

Q. (By Mr. Lyne) Laredo is where there is a cutter and the apprentice, is that correct? A. Yes.

Q. And the cutter makes a dollar eighty-seven and a half where he had made a dollar seventy-five? A. That is what the record shows, sir; I don't know.

I think I referred you to the record because I didn't know.

Q. Now, with respect to Kabro, with respect to the thirty-seven and a half hour week and the forty hour week, is it your testimony that you had an oral agreement but that in practice, the oral agreement was not complied with in that they worked at straight time pay for forty hours? A. No, sir, this is not my testimony.

We have an oral agreement and they followed through with the oral agreement.

Q. But if they worked forty hours, they got paid straight time pay for forty hours? A. This was our agreement.

106 Q. The oral agreement wasn't that you have a thirty-seven and a half hour week? A. Yes, sir, it was, effective the second year of the agreement.

Q. When did the second year start? A. As far as the agreement was concerned, the employees were automatically on a thirty-seven and a half hour week from April 9th, 1964, however, when we negotiated a shorter work week we realized too that the burden is on the employer and we allow him a year during which he can pay his employees a straight time wage instead of overtime after seven and a half hours in one day.

Now, commencing with the second pay period in April of 1965, the employer would have to pay them at time and a half over seven and a half hours in one day.

Q. This is Kabro, I take it? A. This is Kabro.

Q. But by then we had a written agreement, didn't we? A. No, sir, I don't believe so.

I think it went into effect in August, did it not?

TRIAL EXAMINER: The earlier testimony, I think, was about a month ago.

MR. LYNE: Correct, August 10th, '64.

Q. (By Mr. Lyne) So, the oral agreement provided then that they got overtime after thirty-seven and a half hours after April 1965?

107

A. The second pay period in April of 1965.

TRIAL EXAMINER: Just so we don't get too confused, Mr. Lyne, you just said correct, August 10th, '64. That is the date on the contract but the actual signature was about, according to the witness, about a month ago which would have been sometime, not necessarily the 10th of August '65.

MR. LYNE: That is right. I have it down here as the effective date was August 10th of '64.

TRIAL EXAMINER: All right.

Go ahead.

Q. (By Mr. Lyne) Now then, referring to Bobby Brooks, do you know who Mr. Bill Klein is?

MR. RICHARDS: I am going to object to any further redirect which is outside the scope of cross.

TRIAL EXAMINER: Overruled.

Go ahead.

THE WITNESS: I have heard of Bill Klein but I have never met him. I don't know him personally.

Q. (By Mr. Lyne) Do you know that he used to be vice president of production? A. No, sir, I don't know this.

Q. Now, you testified in answer to a question of Mr. King concerning the cutters and now there are cutters that make three ten, a minimum of three ten an hour, is that correct? A. Yes, sir.

108

There are cutters in the plant that make a minimum of three ten per hour.

Q. There are also cutters that make a minimum of two seventy-five, aren't there? A. I have no knowledge of this. There may be if they have been hired since this agreement was executed, meaning the new agreement.

Q. Well, it hasn't been executed yet, has it? A. The wage increases are in effect.

Q. Yes, I realize that, but it hasn't been executed? A. No, sir.

Q. Is it your testimony that you don't know whether or not there are cutters getting two seventy-five an hour with Bobby Brooks? A. That is my testimony. I don't know.

Q. And spreaders are getting a minimum of two oh five, is that correct? A. There are spreaders in there that are getting a minimum of two oh five. I don't know if all of the spreaders are getting two oh five because I don't know the position in regard to turnover in that plant.

Q. Do you know that there are spreaders getting a dollar eighty-nine? A. No, sir, I don't know that.

Q. Do you know that there are spreaders getting a dollar eighty?

109

A. No, sir, I don't know this either.

TRIAL EXAMINER: What troubles me a little, Mr. Vickers, is that in your flyer you talk about a minimum wage of three ten for cutters and two oh five for spreaders so if this is a minimum wage, this is the minimum wage for some of them, is that it but for others you have a lower minimum?

Some of the others may have a lower minimum depending on their length of service, is that it?

THE WITNESS: Well, if they were hired recently I am sure that they don't start out at the top minimum of three ten. They would go through an apprenticeship.

TRIAL EXAMINER: Well, this is what troubles me.

You see, you are expressing top minimum and there is kind of a contradiction in terms, at least, to a layman and it may be that some laymen are going to be reviewing this record.

Now, what does the agreement provide?

Are all of the terms spelled out in that Justice article?

THE WITNESS: I don't know, sir.

TRIAL EXAMINER: Now, let's take an example. You say there will be a cutter there getting three ten but there might be one getting two seventy-five. Would the two seventy-five be something less than a journeyman's rate?

THE WITNESS: Oh, yes, sir.

110 TRIAL EXAMINER: What is the minimum journeyman's rate, one who has served his apprenticeship and is a full-fledged cutter?

THE WITNESS: I don't know what this rate would be but I assume it would be around three dollars and ten cents an hour, what the regular cutters are getting.

TRIAL EXAMINER: So that three ten is the regular rate for an ordinary cutter and anybody who is getting less than that is something less than a full-fledged cutter, is that it?

THE WITNESS: Yes.

TRIAL EXAMINER: He is serving some kind of an apprenticeship?

THE WITNESS: Yes.

TRIAL EXAMINER: And if they hired a new employee from another plant who had been a full-fledged cutter at this other plant and a lot of experience in the industry, he would go in at three ten?

THE WITNESS: If he had the experience, yes, sir.

TRIAL EXAMINER: All right.

I understand.

Go ahead, Mr. Lyne.

Q. (By Mr. Lyne) Mr. Vickers, is that what you are presuming or is this what you know of your own personal knowledge? A. This is what I am having to presume in this case, Mr. Lyne, because I used the Justice
111 article. I know what the wages were in the plant before and this is what I believe to be true and in effect today.

Q. In other words, you don't even know whether somebody is getting two seventy-five an hour?

TRIAL EXAMINER: He has already said that.

Q. (By Mr. Lyne) So therefore, you must make a presumption that if somebody is, that it is in line with the explanation which you have given to the Trial Examiner, is that right? A. Yes, sir.

Q. And that would apply equally, well, to the spreaders? A. I assume so, yes, sir.

MR. LYNE: That is all.

Thank you.

TRIAL EXAMINER: Any further questions?

RECROSS-EXAMINATION

Q. (By Mr. Richards) Mr. Vickers, turning for a minute back to Bobby Brooks, is it correct to say that there are minimum wage rates in classifications generally provided in the collective bargaining contract previously in effect?

MR. LYNE: I object. The previous contract is in evidence. It will speak for itself.

MR. RICHARDS: This is a preliminary question.

TRIAL EXAMINER: Let's go on to the next question.

112 Q. (By Mr. Richards) Assume with me for a moment that there are minimums provided for with respect to various classifications.

Tell me whether or not there are employees drawing substantially over or over the minimums in their classifications? A. Yes, sir, there are.

Q. Now, how does this come about? A. Well, when we negotiate a contract — it has only been recently that we have —

MR. LYNE: Mr. Examiner, I object to the general policy of the Charging Party.

TRIAL EXAMINER: Well, this may lead to a material answer to the specific questions of Bobby Brooks. He is explaining how he gets the information.

Go ahead.

THE WITNESS: It has only been recently that we have been able to negotiate class minimums into an agreement.

Before then the wages varied. Some may have been above the class that we negotiated and some may have been below but once we negotiated a class minimum, the one that was below came up to the class minimum and the one that was above the class minimum received an increase on top of his wages then so as a result you get variances. You don't have everybody in a factory making the minimum; you have got people making above

but you don't have anyone making below unless they are serving an apprenticeship.

113

Now, in the case of Bobby Brooks —

MR. RICHARDS: I think you have answered my question.

TRIAL EXAMINER: All right.

Anything further, Mr. Richards?

MR. RICHARDS: No, nothing further.

MR. KING: Nothing further.

TRIAL EXAMINER: Anything further, Mr. Lyne?

MR. LYNE: Yes, just one question.

FURTHER REDIRECT EXAMINATION

Q. (By Mr. Lyne) So if there are cutters at Bobby Brooks making two seventy-five an hour, your testimony is either they are apprentices or the one making three ten is above the minimum, is that correct? A. No, sir, that is not my testimony.

Q. Well, how can there be one employee with a minimum of three ten and one employee with a minimum of two seventy-five?

MR. KING: Well, I object. I think the witness has testified very clearly —

TRIAL EXAMINER: It is my understanding, Mr. Lyne, that what the witness testified is that in the cutting, apparently in the cutting craft skill; it is common in the building trade, at any rate, you have a journeyman's rate and you have lower rates for apprentices and what Mr. Vickers has testified, in effect, as I understand him is, that the two seventy-five which you put forth as what someone might be making is, pardon me and if I understand it correctly, is an apprentice's wage, is that right?

114

THE WITNESS: Yes, sir.

MR. RICHARDS: If any are being paid and I think that he said that he didn't know.

TRIAL EXAMINER: Yes.

MR. LYNE: Yes, but, of course, the only contract that we had before has no such provision that I can find in a quick examination of it. We don't have the benefit of a subsequent contract.

TRIAL EXAMINER: Any further questions of the witness?

MR. LYNE: No.

TRIAL EXAMINER: I have just a couple of questions, Mr. Vickers.

First of all, I think you were asked in connection with the Nardis negotiations about the vacation matter and you indicated what your conversation had been with Mr. Friedman.

What about holiday pay, has that also — he said that had been discussed and passed over.

What is your recollection about that?

THE WITNESS: Well, the vacation and the holiday occurred at the same meeting.

TRIAL EXAMINER: Had you made a request for more holidays?

THE WITNESS: Yes, sir, we had.

TRIAL EXAMINER: What did he say?

115 THE WITNESS: Well, when I spoke to him on vacations he said he was willing to give us — now, this is not Werner Friedman but this is their attorney. He said we are willing to give a three-week vacation after twenty years of service.

TRIAL EXAMINER: I heard you about vacations.

THE WITNESS: Then I asked him what he was willing to give us on holidays.

TRIAL EXAMINER: What did he say?

THE WITNESS: I said we want at least an additional holiday and I said we will go one better on vacations and I made him that offer. He said well, if we can get around the wage increases, I am sure that we can work these things out.

TRIAL EXAMINER: Had the company then already offered more holiday pay?

THE WITNESS: To the best of my knowledge, sir, they hadn't on that day.

TRIAL EXAMINER: All right.

The other question I had is about this cutting matter at Kabro.

I understand that the cutter went to a dollar eighty-seven and a half and when Mr. Lyne said hadn't he been getting a dollar seventy-five before, you answered him if that is what the record shows.

Well, do you know what the cutter had been getting before?

THE WITNESS: Sir, I believe you meant Amadee instead of Kabro.

116

TRIAL EXAMINER: I beg your pardon but I meant Laredo.

THE WITNESS: No, sir, I didn't want to testify to this because I didn't know that was the exact figure.

TRIAL EXAMINER: All right.

Now, apart from the cutter himself are there other employees in the cutting department?

THE WITNESS: Yes, sir, there are three or, I believe it is four employees in the cutting department.

TRIAL EXAMINER: All right.

Do you know what happened to their wages in the Laredo contract?

THE WITNESS: Yes, sir, in the case of Amadee they received the full twenty-five cents over the term of the agreement.

In the case of Laredo Manufacturing Company, as I stated before, with my conversation with the plant manager, they agreed that they too would get the twenty-five cents over the likely agreement.

TRIAL EXAMINER: All right.

Anything further, gentlemen?

Thank you, Mr. Vickers, you are excused.

(Witness excused.)

MR. LYNE: Respondent would call Mr. Elmer Davis.

117

TRIAL EXAMINER: Mr. King, Mr. Davis has been subpoenaed and I understand you have a statement that you want to make with respect to that subpoena with a motion to revoke the pending performance. Do you want to be heard on it?

MR. KING: Yes, Mr. Examiner.

Counsel for Respondent has said that he desires to call Mr. Davis to show that his decision was arbitrary and capricious.

TRIAL EXAMINER: Well, what is it that you wish to call Mr. Davis for, Mr. Lyne, to keep the record clear?

MR. LYNE: If the Trial Examiner please, one of the allegations of Respondent is that the Regional Director, in issuing his decision and certification of election following objections to the election was arbitrary and capricious in his determination thereof and we desire to question Mr. Davis concerning that which he based such a decision on since there was no hearing in that matter.

TRIAL EXAMINER: Are you suggesting that it was based on something other than what he set forth in his decision?

MR. LYNE: No, sir, I don't know what it was based on, I only can surmise.

I surmise that he did not have sufficient material before him to reach the conclusion that he reached because the matters we have now looked at show a different situation to what the Regional Director found and I would surmise that the Regional Director relied on some members of his staff to
118 furnish him with information on which he relied and that which was furnished him was not complete; this is only surmising, of course, since I can't know.

TRIAL EXAMINER: All right.

Do you want to be heard, Mr. King?

MR. KING: Yes, I do.

First, I will say that the Respondent has asked for a hearing in this matter and the hearing has now been granted and any defect in the decision in overruling Respondent's objections has been cured by this hearing that we are having today and therefore, there is no prejudice to the Respondent.

Furthermore, the decision of whether the Regional Director was arbitrary and capricious can be tested against the evidence introduced at this hearing and I think — I submit that the evidence here will show and has shown that the decision of the Regional Director is neither arbitrary nor capricious.

Thirdly, the Respondent is attempting to inquire into the mind of the investigator and the decision maker and such inquiries has always been considered, not the inquiries but the mind and the facts that the decision maker relied on the way he reaches a decision is always a matter of privilege and I think that the information contained in his files and the testimony concerning the method he arrived at reaching his decision is his privilege and I move that that ground be considered.

119 I also direct the Trial Examiner's attention to the subpoena itself in that it requests that the Regional Director bring with him all memorandums and all matters contained in the file in the representation case and urge that this is a further and I think I can quote the subpoena. It says, "All written correspondence, memorandums and statements of witnesses in the file are under the control of said Regional Director."

For these reasons, as well as the Board's rules and regulations I urge — well, I will say one more thing.

I don't think that the Respondent here has shown any good cause for the information he seeks to get from the Regional Director, at least, on the evidence introduced at this hearing and based upon his own statements as to why he request that we have the Regional Director testify.

For these reasons I respectfully direct the Trial Examiner to quash the subpoena.

MR. LYNE: The record, Mr. Trial Examiner, refers to the subpoena served on Mr. Davis. The subpoena calls for all written correspondence, memorandums, statements of witnesses in the files or under the control of said Regional Director entered into or received in connection with the supplemental decision and certification of representative in Case No. 16-RC- — so it was limited only to that purpose and the Respondent does not intend to inquire into the mental processes of Mr. Davis but merely to know what
120 evidence he had before him in reaching a decision.

I believe authorities have already been cited to the Trial Examiner in our response to petition to revoke the subpoena. It would serve no purpose here to duplicate that again.

TRIAL EXAMINER: Might I inquire, Mr. Lyne, if you applied to the General Counsel of the Board for their permission for Mr. Davis to testify?

MR. LYNE: Yes, sir, we did.

TRIAL EXAMINER: Very well.

Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

I will grant the motion to revoke the subpoena primarily on the ground that I cannot see that the testimony of Mr. Davis would serve any useful purpose since the facts concerning the validity of the election and whether the union's representations were false and, if so, whether they were so false to require setting aside the election and so on are fully developed and I see no need to call Mr. Davis on that issue.

I also find some merit in the suggestion of Counsel for General Counsel that any inquiry into Mr. Davis' mental processes would be inappropriate. His decision speaks for itself and in a sense is, I won't say
121 superseded, but any error in his not holding a hearing is obviated by the hearing that is being held today.

For those reasons I grant the motion to revoke the subpoena.

Is there any further testimony, Mr. Lyne?

MR. LYNE: If I may, let me get in my formal papers on the various subpoenas that we have served which the Trial Examiner has sustained motions to revoke.

Under the rules I understand that I have to get these in the record.

TRIAL EXAMINER: Yes.

MR. KING: May we go off the record?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. LYNE: Counsel for General Counsel has been so kind as to index for us most of the subpoena matters that are actually under General Counsel's Exhibit 2(a) through 2(w) — do you want to change these to Respondent's —

MR. KING: Well, I will offer them at your request in accordance with the Board's rules and regulations, Section 102, 31 and 32.

MR. LYNE: Well, I want to offer all except I do not want to offer 2(e), 2(f), 2(g), 2(k), 2(l) or 2(m).

122

MR. KING: In that case why don't you just go ahead and offer them.

TRIAL EXAMINER: I think it will be simpler, Mr. Lyne, if you don't mind —

MR. LYNE: I don't mind —

TRIAL EXAMINER: — just offer the batch.

Your argument doesn't need to rest on every item of that that you have introduced.

MR. LYNE: We offer 2(a) through 2(w).

TRIAL EXAMINER: General Counsel's Exhibit 2, the subpoena matters, consisting of Exhibits 2(a) through 2(w) is offered as a complete file with respect to the subpoenas.

(The documents above-referred to were marked General Counsel's Exhibits Nos. 2(a) thru 2(w) for identification.)

TRIAL EXAMINER: Do you have some additional matters in addition to those?

MR. LYNE: Yes, sir.

TRIAL EXAMINER: Well, just a minute.

2(a) through 2(w) will be received.

(The documents above-referred to, heretofore marked General Counsel's Exhibits Nos. 2(a) thru 2(w), were received in evidence.)

TRIAL EXAMINER: You are going to make some argument generally with respect to errors in revocation of subpoenas or something like that, is that correct?

123

MR. LYNE: I don't plan to make any argument.

TRIAL EXAMINER: You may at some time want to argue error in the subpoena rule.

MR. LYNE: Yes.

TRIAL EXAMINER: All right.

MR. LYNE: That is my purpose.

TRIAL EXAMINER: All right, go ahead.

Do you have other subpoenas or correspondence to offer?

MR. LYNE: Yes, sir.

Would you mark this?

(The document above-referred to was marked Respondent's Exhibit No. 13 for identification.)

MR. LYNE: I will identify these and offer them as I show them to counsel.

Respondent offers the following exhibits for the purpose of completing the record.

As R-13, the order of the Trial Examiner dated September 21, 1965.

TRIAL EXAMINER: That is in evidence.

MR. LYNE: Is that already in?

TRIAL EXAMINER: Yes.

MR. LYNE: I withdraw 13.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 13, was withdrawn.)

124 MR. LYNE: Respondent's Exhibit 14 is a letter dated June 4, 1965 from Mr. Arnold Ordman addressed to Fritz Lyne, relative to the subpoena to Mr. Elmer Davis.

(The document above-referred to was marked Respondent's Exhibit No. 14 for identification.)

MR. LYNE: R-15 is response to petition to revoke subpoena duces tecum RE: Bishins.

(The document above-referred to was marked Respondent's Exhibit No. 15 for identification.)

MR. LYNE: R-16 is response to motion to revoke subpoena duces tecum RE: Carlos Gonzalez.

(The document above-referred to was marked Respondent's Exhibit No. 16 for identification.)

MR. LYNE: Respondent's Exhibit 17 is a return on subpoena duces tecum served on Herman L. Beishins on May 31st, 1965.

(The document above-referred to was marked Respondent's Exhibit No. 17 for identification.)

MR. LYNE: 18 is a return on subpoena duces tecum from Carlos Gonzalez dated May 31st, 1965.

(The document above-referred to was marked Respondent's Exhibit No. 18 for identification.)

MR. LYNE: 19 is a return on subpoena duces tecum served on Bill Klein dated May 31st, 1965.

125

(The document above-referred to was marked Respondent's Exhibit No. 19 for identification.)

MR. LYNE: 20 is a return on subpoena served on Honore Ligarde dated May 31st, '65.

(The document above-referred to was marked Respondent's Exhibit No. 20 for identification.)

MR. LYNE: Respondent's Exhibit 21 is a return on subpoena duces tecum served on Elmer Davis dated May 27, 1965.

(The document above-referred to was marked Respondent's Exhibit No. 21 for identification.)

MR. LYNE: 22 is Request for Admissions served upon the International Ladies' Garment Workers.

(The document above-referred to was marked Respondent's Exhibit No. 22 for identification.)

MR. LYNE: R-23 is a letter dated June 14, 1965 from myself to Mr. Frederick U. Reel, copies to Mr. Elmer Davis, Mr. James A. King, Jr., and Mr. Honore Ligarde relative to the subpoena on Mr. Ligarde.

(The document above-referred to was marked Respondent's Exhibit No. 23 for identification.)

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

Is there any objection to receipt of Exhibits 14 through 23?

126 MR. RICHARDS: I object to 23 as immaterial.

MR. KING: I think the formal papers will show that the letter of June 11 referred to in Exhibit 23 was referred to the Trial Examiner by an order of the Regional Director.

TRIAL EXAMINER: Apart from 23 is there any objection to receipt of these exhibits?

MR. RICHARDS: I have none.

TRIAL EXAMINER: 14 through 22 are received without objection and 23 is received over objection.

(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 14 thru 23, were received in evidence.)

127 MR. LYNE: Can it be stipulated that the various witnesses to whom subpoenas were sent were advised as to the setting of the hearing by telegraphic communication?

MR. RICHARDS: I certainly so stipulate.

MR. KING: I will stipulate.

TRIAL EXAMINER: Very well, the stipulation is received.

MR. LYNE: Respondent calls Honore Ligarde.

TRIAL EXAMINER: Mr. Ligarde, I take it, is not here and at this point I think it might be appropriate for me to make a short statement with respect to the subpoena matters.

As the exhibits just introduced show, the Respondent issued subpoenas duces tecum directed to various individuals who have contracts with the Charging Party and the contracts, to some extent, have been the subject of this litigation. Subpoenas, for example, went to Mr. Klein of Bobby Brooks who is located at Cleveland and Mr. Beishins of Lilly Lynn who is located in New York and some others.

After being advised that the various contracts would be made available by the Charging Party, I granted the several motions to revoke which had been filed by these gentlemen in these widely scattered sections on the grounds that the material called for in the subpoena duces tecum would be made available and therefore there was no need for the subpoena duces tecum.

No subpoenas ad testificandum were requested or issued insofar as I know.

128 With regard to Mr. Ligarde, who has been called —

MR. LYNE: Carlos Gonzalez, I believe, was ad testificandum.

TRIAL EXAMINER: Is that correct?

My impression was that they were all duces tecum. Here is the duces tecum to Mr. Gonzalez.

MR. LYNE: I beg your pardon. Excuse me.

TRIAL EXAMINER: Now, with respect to Mr. Ligarde, I did not revoke the subpoena which had been issued to him, even though he had filed a motion to revoke.

My reason for not revoking it is, I think, clear from this record that it appeared from correspondence which Mr. Lyne had with Mr. Ligarde of which I received copies that Mr. Lyne and Mr. Ligarde had reached an agreement or Mr. Ligarde would appear as long as he didn't have to bring certain records with him.

I am going to state that if Mr. Ligarde had pressed his Petition to revoke, I think we would have made the same ruling on it that I made on the others, for the same reason, but I did not do so on the grounds that he apparently agreed to appear and therefore, the Petition to revoke, has in effect, been withdrawn. I say in effect, because the only correspondence I had was from Mr. Lyne, but it showed a copy to Mr. Ligarde and no response was ever received.

It also showed a copy to General Counsel.

129 Under the circumstances, I suppose that in the absence of a renewed motion to revoke I should consider Mr. Ligarde as still under subpoena, but since he is not here, I will leave it to Mr. Lyne as to what steps he wishes to take.

MR. LYNE: If the Trial Examiner please, there is one distinguishing characteristic here that with respect to all of those other witnesses mentioned by the Trial Examiner, wherein the Petition to revoke was granted, copies of the contract have this day been supplied for use in this hearing. The only contract missing is that of Amedee Frocks of which the Charging

Party said that they do not have a copy of, and Mr. Ligarde advised us that they do have such a copy.

If the contract was furnished, I would be in a position to then state whether or not I need Mr. Ligarde in person; I don't know without seeing the contract.

TRIAL EXAMINER: Let us leave it this way, then. We will continue with the hearing and indeed hopefully close the hearing today, but the parties are free to stipulate into evidence the Amedee contract and at that time, or any other appropriate time, I can receive a motion to reopen the hearing with opposition and so on and rule on it like any other motion, if it is believed that Mr. Ligarde's testimony should be taken.

130 In other words, although the hearing will be closed, obviously the record remains under my control until the time I issue the Trial Examiner's decision and at any time during that period the record can be supplemented by stipulation or by motion in opposition and so on.

MR. RICHARDS: In connection with Mr. Ligarde, may I be heard a moment?

TRIAL EXAMINER: Certainly.

MR. RICHARDS: First, I have only spoken to Mr. Ligarde once several months ago, I guess, but I don't want any imputations in the record of bad faith on his part, at least, if I can disabuse it.

When I talked to him about it several months ago, I told him it was my personal opinion that unless he was tendered, actually, in the cash the witness' fee for attending, that he didn't have to attend, and I don't know whether this has had anything to do with his decision or not.

The second thing, in view of Mr. Lyne's indication about the Amedee contract, I take it the testimony in this record was that there is such a copy but it is not here in Dallas, it is in St. Louis, and I indicated off the record and will indicate on the record, if it will ease the position of the Respondent, that I will undertake to obtain a copy and furnish it to Mr. Lyne.

TRIAL EXAMINER: As the record now stands there is testimony that the contract is, for material purposes, identical to the contract already in the record.

If that, upon examination, proves to be so, none of you need to do anything more at all because we will be satisfied with the record as made, but if it does not appear to be so, or for some other reason you want to reopen, I don't say that the motion will automatically be granted, but it is, I think, should be clear by this time that I want the record to be full and if there is some reason to believe that it is not reasonably full, I would certainly look with favor on such a motion.

MR. LYNE: Well, Respondent, for the purpose of making the record complete would, pursuant to Section 102.31d of the Board's Rules and Regulations petition counsel for General Counsel to enforce in the proper district court the subpoena for Mr. Honore Ligarde.

Now, I make that in light of any of the matters suggested by the Trial Examiner. I don't want to put General Counsel to a useless thing, but I do want my record protected. If nothing else can be done in this regard I do want General Counsel to enforce the subpoena.

TRIAL EXAMINER: All right.

It is understood that you have made your statement on the record, Mr. Lyne, but you are quite agreeable to General Counsel pursuing and Charging Party and your pursuing other avenues and Charging Party of securing that evidence before resorting to that?

132

MR. LYNE: Yes.

If Charging Party will furnish me with a copy of the contract, I can then determine in my judgment whether it is of interest to my client that I need Mr. Ligarde's testimony and If I do not, I will so advise the Trial Examiner and all parties that we need not proceed along these lines.

MR. RICHARDS: Now, as I understand it, the subpoenas were for the production of the documents. The document I am agreeing to obtain and I don't think Mr. Lyne should be in a position to close it today in the terms of testimony that he wanted, because the testimony is here about the contract and all, I understand, he sought is the contract, and if this is what he has agreed, if it were produced, he would waive the subpoena of Mr. Ligarde.

TRIAL EXAMINER: Well, I don't know that there is any need to quibble about it at this time. Mr. Ligarde might feel, for example, that he wanted to renew his motion to revoke.

I think with all respect, Mr. Lyne, your request to General Counsel to enforce the subpoena may be a little premature and might, or I think our understanding should be, that it rests on the record, but that a reasonable period of time --

133 MR. LYNE: I will agree with that, Mr. Trial Examiner, but I just didn't want to close this hearing without making such a request and be in the position of possibly having waived it.

TRIAL EXAMINER: All right.

I think we understand that Mr. Lyne has waived nothing in this case.

MR. LYNE: Mr. Martino, please.

Whereupon,

FRANK MARTINO

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lyne) Will you state your name, please. A. Frank Martino.

Q. Where do you live, Mr. Martino? A. 1222 Emerson Drive, Denton, Texas.

Q. Where are you employed? A. Russell-Newman Manufacturing Company, Inc.

Q. What capacity? A. Vice-president.

Q. How long have you held the position of vice-president?
A. Approximately eight years.

Q. And in general terms what is your area of responsibility?
A. Production, personnel, fixed assets and general management.

134 Q. What is the business of Russell-Newman in general terms?
A. The manufacturing of ladies, girls and childrens lingerie.

Q. And with respect to time pay or piecework basis, how are the employees of Russell-Newman compensated? A. All employees are compensated on time pay.

Q. Are there any on a piecework basis? A. No.

Q. In general terms would you tell us the difference between a manufacturing company engaged in that which Russell-Newman is engaged in and one who is engaged in the manufacture of ladies dresses or outer garments? A. Based on the AAMA —

Q. What is AAMA? A. The American Apparel Manufacturers Association, wage survey, fourth quarter, 1963, to be in effect in the year 1964, the wage scales of the manufacturing of ladies dresses is considerably higher than that of the manufacturing of lingerie, and this is generally over the United States.

MR. RICHARDS: Well, I will object and move to strike the testimony as hearsay.

TRIAL EXAMINER: Are these matters published anywhere?

MR. LYNE: We can go through all of this if you want to, but the Trial Examiner is not bound by the rigid rules of hearsay and I am trying to move this thing along.

We have the schedules that we can get into.

TRIAL EXAMINER: I will overrule the motion to strike.

Go ahead.

Q. (By Mr. Lyne) Does Russell-Newman — A. The second major thing, normally speaking, is the price of the piece goods that both the two different type of companies make or the price of piece goods that they pay for and the price of merchandise that they sell and the market that they distribute to.

Q. In what respect? A. In the respect to ladies ready-to-wear, the price of piece goods is considerably higher than the price of piece goods that are manufactured by ladies lingerie, the price of the finished garment, and ladies ready-to-wear is considerably higher than the price of the finished garment in our firm, ladies lingerie.

Q. What is the normal work week at Russell-Newman? A. The normal work week is forty hours a week, five days a week.

Q. And has that been a consistent work week? A. Since the Korean War.

Q. Has it dropped under that since the Korean War? A. No, right following the Korean War there was a temporary layoff following the Korean War.

136 Q. Is it your testimony that since then they have worked at least 40 hours a week every week except for holidays and vacations? A. Or times that they selected to be off.

Last year our actual working week was in excess of one hundred percent, because of the amount of overtime that the factories worked.

Q. Mr. Martino, I ask you, during the course of the organizing campaign, if the issue of time work versus piecework was a matter that was in issue between the parties? A. Yes.

MR. RICHARDS: I object —

TRIAL EXAMINER: I don't understand the testimony.

What do you mean the issue, the question was an issue?

The warranty bargaining.

MR. LYNE: No, I mean in the campaign is what I directed my question to.

TRIAL EXAMINER: You mean that the Union was asking for a change?

137 MR. LYNE: The Union was assuring the employees that they would not go on a piece rate basis without their consent and that the employees that Russell-Newman had apparently expressed themselves to the Union as they had to the company that they wanted to stay on a hourly rate, as opposed to a piece rate basis, and therefore, in comparative wage scales, the employees in campaign literature should not be compared with piece rate employees without advising them that that is what is being done.

By the representations here, as the evidence has brought out, is to a large extent to those who are on a piece rate basis.

TRIAL EXAMINER: So your question, then, of Mr. Martino, as I understand it, is that during the Union campaign did the Union represent to the employees that they would continue, that if successful in an election, they would continue an hourly wage rather than on a piece rate basis, is that the question?

MR. LYNE: Yes, that they would not be changed without their consent I think is more accurately in the campaign literature which we will introduce into evidence here in a minute.

TRIAL EXAMINER: All right.

Q. (By Mr. Lyne) Does Russell-Newman have a trial period for new employees for wage advancement that depends on satisfactory performance during that period of time? A. No.

Q. With respect to concerns engaged in the manufacture of ladies lingerie and those in ladies ready-to-wear, and so forth, relatively — well, in childrens clothes what is the lowest paid in the industry, if you know, the pay scale?

138 MR. KING: I object. I don't understand the question.

MR. LYNE: Well, it possibly has already been answered. I withdraw the question.

Mr. Examiner, the questions that I am going to ask now are clearly secondary evidence which I admit. I say that in advance so the Examiner can have the opportunity to think over his ruling of investigations Mr. Martino has made with respect to witnesses which we have attempted to obtain testimony from by various means, including subpoenas, to whom the Examiner has ruled should not be here.

MR. RICHARDS: You mean just conversations?

MR. LYNE: Yes.

MR. RICHARDS: Well, I object to it before we start.

MR. KING: I do, too.

TRIAL EXAMINER: Let's hear it.

I prefer to have at least one question before I rule.

MR. LYNE: Yes, I am going to ask my questions.

We have already had Mr. Vickers' conversation with a number of people in New York on these things which I thought was helpful to the record, and that is the reason I didn't object to them.

Q. (By Mr. Lyne) Mr. Martino, have you had occasion to check with Mr. Bill Klein of Bobby Brooks with reference to minimum wages for various types of employees with Bobby Brooks under their present and prior contracts?

139

A. Yes, sir.

Q. With respect to cutters, has he advised you that they have cutters on minimum rates other than three ten an hour? A. Yes.

MR. RICHARDS: I object and move to strike.

MR. KING: I object.

TRIAL EXAMINER: Mr. Lyne, how long will this series of questions take?

MR. LYNE: Oh, it is not going to take long at all.

TRIAL EXAMINER: Well, I am inclined to overrule the objection and let it in the record. I am at the same time somewhat inclined to think that the objection is well taken. I see no harm in getting it into the record over objection with the understanding of all parties that I probably will place no reliance on it, but I will probably indicate permanently in the decision that it is not to be relied on and that it is hearsay and do not regard it as appropriate, but if the authorities reviewing it think otherwise, you don't have to remand the case.

In other words, to put it in another way, if I were to sustain the objection, Mr. Lyne would make it in terms of an offer of proof which would get it there.

Would you prefer that?

MR. RICHARDS: I mean, if it comes into the record, then, I am confronted with — do I go out now and try to find rebuttal testimony for matters that you give us no assurance of being considered —

140

TRIAL EXAMINER: All right.

If you prefer having Mr. Lyne put it in his words as an offer of proof, because that is the only alternative — do you think that is preferable?

MR. RICHARDS: At least, I don't get put upon from behind by people somehow accrediting this testimony.

TRIAL EXAMINER: Well, all right.

On second thought, perhaps it is more orderly to do it that way.

As I indicated earlier, I think the evidence is objectionable. It is quite possible that I am wrong, and therefore, I was going to let it in and let someone else review it, but Mr. Richards has suggested that it would be better to have the matter remanded, if I am wrong, rather than have the record, in effect, completed without his having an opportunity to put in answering testimony, so I will sustain the objection to this line of questions that you are about to embark on, and you can make an offer of proof.

MR. LYNE: The Respondent offers to make an offer of proof that if Mr. Bill Klein —

TRIAL EXAMINER: No —

MR. LYNE: If I am going to make an offer of proof, I want it complete.

141 I want to make it that if the subpoena has not been revoked that Mr. Klein would testify so, and in the absence of Mr. Klein, Mr. Martino would testify to the same conversation as secondary evidence.

MR. RICHARDS: Well, I don't —

TRIAL EXAMINER: I think it is appropriate to offer your proof through Mr. Martino here on the witness stand and he can testify — I mean, you can make an offer that if asked, he would state that he had a conversation with Klein in which Klein said.

Now, I suppose you can argue from that that if the subpoena hadn't been revoked you would be able to produce that testimony from Klein, but you can go ahead.

MR. LYNE: Respondent makes an offer of proof that if Witness Martino had been permitted to testify, he would testify that he had made an investigation into the contract Bobby Brooks now has with its employees with the Charging Party, and that Bobby Brooks presently has cutters —

MR. RICHARDS: Objection.

This is not —

MR. LYNE: Now, can't I make my whole offer of proof without objection?

MR. RICHARDS: Well, I think the offer of proof is based on conversations. He hasn't even looked at the books and records of Bobby Brooks.

142 MR. LYNE: I understood that you could make an offer of proof about any way you wanted to, and that it was not subject to objection. If he wants to object, let's put the testimony in.

TRIAL EXAMINER: Go ahead and start over again, Mr. Lyne, making clear that your offer of proof is to what Mr. Martino would testify.

MR. LYNE: I thought I had done that.

TRIAL EXAMINER: I thought it was all right, too, but Mr. Richards raised the point.

MR. LYNE: Respondent makes an offer of proof that if the witness, Mr. Martino, were allowed to testify upon these matters, he would testify that he made an investigation into the present contract between Bobby Brooks and the Charging Party, and in the course of that investigation, he talked to Mr. Bill Klein, who is vice-president of production of Bobby Brooks, and that Mr. Bill Klein advised him that Bobby Brooks presently has cutters who are getting a minimum of three ten per hour; that he has other cutters who are getting a minimum of two seventy-five per hour who are not journeymen, and that he has spreaders who are getting a minimum of two oh five per hour; that he also has spreaders that are getting a minimum of a dollar eighty-nine, and that he has spreaders that are getting a minimum of a dollar eighty, and these are all classified as spreaders.

143 That concludes it on Mr. Bill Klein.

MR. RICHARDS: I take it each one is separate?

MR. LYNE: Yes.

TRIAL EXAMINER: Did you have something you wish to —

THE WITNESS: I want to correct the title of Mr. Klein. He is president of manufacturing of Bobby Brooks.

TRIAL EXAMINER: All right.

That offer of proof will stand in the record.

MR. LYNE: I make an offer of proof that if the witness, Martino, were allowed to testify, he would testify that he investigated the present contract between the Charging Party and Kabro, Inc., of Houston, Texas, and that in the course of that investigation he talked with Mr. Herman Beishins, who is an official of Lilly Lynn, who owns Kabro, Inc. of Houston, and that Mr. Beishins advised Mr. Martino that their Shipping Department at Kabro, Inc. was not subject to the contract between the Charging Party and Kabro, Inc., and that he, Mr. Beishins, had advised the Charging Party that he would close up before he would put the Shipping Department in, and that it is not a part of the contract, but excluded.

TRIAL EXAMINER: That concludes the offer as to Kabro?

MR. LYNE: Yes.

TRIAL EXAMINER: That offer of proof stands for the record.

MR. LYNE: Now, as to Laredo Manufacturing Company, Respondent makes an offer of proof that if the witness, Martino were allowed to testify

144 in this regard, he would testify that he investigated both the present contract and the prior contract between Laredo Manufacturing Company and the Charging Party, and in the course of that investigation, talked with Mr. Carlos Gonzalez, who is the manager of Laredo Manufacturing Company plant, and Mr. Gonzalez advised him that approximately seventy percent of the employees at Laredo Manufacturing Company are operators rather than eighty-eight percent as found by the Regional Director, and that the employees of Laredo Manufacturing Company work approximately thirty weeks per year, and, I believe, that concludes the offer of proof on Laredo.

TRIAL EXAMINER: All right.

The offer will stand for the record.

MR. LYNE: Excuse me, Mr. Examiner, I have one more item on that and that is that there is one cutter at Laredo Manufacturing Company whose

rate on February 1965 was a dollar eighty-seven and a half cents per hour on a thirty-five-hour week, whose rate had been on July 11, 1964, a dollar seventy-five per hour on a thirty-five-hour week.

That concludes the offer of proof.

TRIAL EXAMINER: All right, fine.

It will stand for the record.

Q. (By Mr. Lyne) Mr. Martino, the matters that I have stated, would you have so testified had you been permitted to?

145

A. Yes.

Q. Did I correctly state the matters I recited, to the best of your recollection? A. Yes, sir.

Q. How many weeks of the year do the employees of Russell-Newman work, Mr. Martino? A. Work is made available for them approximately fifty weeks out of the year, forty-nine out of the year, not counting vacation time or holidays or the one week they have chosen to be off at Christmas-time.

Q. Has this been pretty consistent for the past, say, five years?
A. Yes, sir.

MR. LYNE: Pass the witness.

TRIAL EXAMINER: Any further questions?

CROSS EXAMINATION

Q. (By Mr. King) Mr. Martino, you testified that there is no starting rate at Russell-Newman or no period of time, no trial period for employees hired at Russell-Newman.

I do understand, however, that an employee doesn't achieve a particular classification for which he is hired, the highest rate he will receive in that classification? A. That is correct.

Q. He does, after he has been there a period of time, receive increases?

146

A. That is correct.

MR. KING: No other questions.

TRIAL EXAMINER: Any more questions?

MR. RICHARDS: One or two.

Q. (By Mr. Richards) To clarify on that, for example, in the Denton plant, what is the starting rate for a new operator? A. A dollar twenty-five.

Q. And they progress up to a dollar forty? A. A dollar forty.

Q. Over what period of time? A. Two years.

Q. When is the first step increase after hiring? A. Eight months.

TRIAL EXAMINER: I am not sure that I understand the testimony.

Do you mean that the highest wage rate paid within the plant is a dollar forty?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And — well —

THE WITNESS: We are going to have to get into the classification of people, now.

MR. RICHARDS: My question was talking about operators.

THE WITNESS: I knew what you were talking about.

TRIAL EXAMINER: All right.

147 Q. (By Mr. Richards) It is correct to say, is it not, Mr. Martino, that the Artelis, A-r-t-e-l-i-s - G-o-s-s-a-r-d, in Bristow, Oklahoma, manufactures a competitive line with that of Russell-Newman? A. If they do not manufacture any foundation garments or brassieres in that plant.

Q. They do manufacture garments that are competitive with the garments manufactured by Russell-Newman? A. Not pricewise.

Q. The same type garment? A. Yes.

MR. RICHARDS: That is all I have.

Thank you.

TRIAL EXAMINER: Anything further?

MR. LYNE: No further questions.

TRIAL EXAMINER: Thank you, Mr. Martino.

You are excused.

(Witness excused.)

MR. LYNE: One more matter with respect to the Artelis-Gossard contract —

MR. RICHARDS: If you want to get into that argument, we will have to open up all —

May we go off the record?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

148

TRIAL EXAMINER: On the record.

MR. LYNE: Can it be stipulated that under the Artelis-Gossard contract the wage increase of five cents, instead of going into effect on November 1st, 1964, in fact, went into effect on November 30th, 1964?

TRIAL EXAMINER: Do you want to add something to that stipulation, Mr. Richards?

MR. RICHARDS: Yes, that is an accurate statement, but I would like to add to it that this same date as to the effective date of the Artelis-Gossard wage increase was contained in a handbill distributed to the Denton employees of Russell-Newman in August of 1964.

TRIAL EXAMINER: At which time the date of increase, the then prospective, was said to be November 1?

MR. RICHARDS: Exactly.

TRIAL EXAMINER: All right.

Is that so stipulated?

MR. RICHARDS: So stipulated.

TRIAL EXAMINER: Very well, the stipulation is received.

MR. LYNE: Respondent rests.

TRIAL EXAMINER: Any rebuttal?

MR. KING: No rebuttal.

TRIAL EXAMINER: Anything further, Mr. Richards?

MR. RICHARDS: No.

149

Well, let me say that due to the fact that Respondent apparently intends to preserve his record as to his subpoenas, it is my understanding that Respondent failed to make a tender of the witness' fee to any of the persons subpoenaed whose subpoenas you now have quashed and it is my

understanding of the Board law, at least, that the tender is prerequisite to a valid subpoena and that these people were not tendered money at the time they got the subpoena.

MR. LYNE: Mr. Examiner, it is not counsel for the Charging Party's authority to argue a subpoena for a third party that he doesn't represent.

MR. RICHARDS: I don't purport to represent --

TRIAL EXAMINER: All right, Mr. Richards' remarks can remain in the record for such service as it may be to anyone who had to brief this matter in the future.

That was not the ground on which I quashed the subpoenas.

MR. RICHARDS: I am fully aware of that.

MR. LYNE: Mr. Examiner, may we have authority to withdraw any exhibits that we do not have duplicates of and make duplicates and furnish them to the reporter after this hearing has been closed?

TRIAL EXAMINER: Yes.

Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

In an off-the-record discussion, it was agreed that briefs would be due in Washington on or before the 25th of October 1965.

150

The closing statement which I will not read but which I will ask the reporter to supply at the end of this transcript, so you are all familiar with its terms, gives you the procedure of getting an extension if one is needed.

Does anyone want to make oral argument?

MR. RICHARDS: I was going to suggest that if we all waive the right of briefs, I would have to argue it orally.

MR. LYNE: I would just as soon waive oral argument.

TRIAL EXAMINER: Do you wish to waive oral argument?

MR. RICHARDS: I will waive oral argument.

TRIAL EXAMINER: All right.

Oral argument has been waived and the briefing date has been set and the reporter will supply the closing statement.

In due course, the Trial Examiner will prepare and file with the Board his intermediate report and recommended order in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the report and recommended order, the Board will enter an order transferring this case to the Board and will serve copies of the order, setting forth the date of such transfer, upon all the parties. At that point, the Trial Examiner's official connection with this case will cease.

151 The procedure before the Board to be followed from that point forward, with respect to the filing of exceptions to the intermediate report, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8. A summary of the more pertinent provisions of those rules will be served upon the parties together with the order transferring the case to the Board.

If there is nothing further, the hearing is closed.

(Whereupon, at 4:40 o'clock p.m., the hearing in the above-entitled matter was closed.)

* * * * *

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

16-CA-2318

Date Filed

April 16, 1965

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

NAME OF EMPLOYER

Russell-Newman Manufacturing Company, Inc.

NUMBER OF WORKERS EMPLOYED

200

ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State)

Denton Factory
Denton, Texas

TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)

Factory

Identify principal product or service

Lingerie and sleepwear

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about March 5, 1965, and at all times since that date, the employer has refused to bargain with the International Ladies Garment Workers Union, AFL-CIO, a labor organization, certified by the National Labor Relations Board as the collective bargaining representative of the employer's employees in a collective bargaining unit described as: "Included" All production and maintenance employees at the Employer's Denton, Texas, plants, excluding designers, office clerical employees, guards, and supervisors as defined in the Act."

By the above acts and conduct and by other acts and conduct, it, by its officers, agents and employees, has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

International Ladies Garment Workers Union, AFL-CIO

4. Address (Street and number, city, zone, and State)

Fidelity Building, Room 531, 1000 Main St. Dallas, Tex.

Telephone No.

RI 2-3881

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

International Ladies Garment Workers Union

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By

David R. Richards

(Signature of representative or person filing charge)

April 15, 1965

(Date)

Attorney

(Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

U.S. GOVERNMENT PRINTING OFFICE: 1965-O-646170

GPO 500025

[Filed May 6, 1965]

COMPLAINT AND NOTICE OF HEARING

It having been charged by the International Ladies Garment Workers Union, AFL-CIO, hereafter called the Union, that Russell-Newman Manufacturing Co. Inc., hereinafter called Respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C. Sec. 151 et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Sixteenth Region, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1.

The original charge was filed by Union on April 16, 1965, and served on Respondent on or about April 16, 1965, by registered mail.

2.

Respondent is and has been at all times material herein a corporation duly organized under and existing by virtue of the laws of the State of Texas, having its offices and place of business in the City of Denton, Texas, and operating plants in the City of Denton, Texas, and in other Texas cities where it is engaged in the manufacturing of ladies' garments and other products. Respondent's Denton facilities are the only facilities involved in this proceeding.

3.

During the past twelve months, which period is representative at all times material herein, Respondent manufactured, sold and shipped

from its Denton plants finished products valued in excess of \$50,000 to points outside the State of Texas.

4.

Respondent is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

5.

The Union is now and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

6.

At all times material herein, Frank Martino has been and is now an officer, director and agent of Respondent, acting on its behalf and is a supervisor within the meaning of Section 2(11) of the Act.

7.

At all times material herein, the following named persons occupied positions set forth opposite their respective names and have been and are now agents of Respondent, acting on its behalf, and are agents within the meaning of Section 2(13) of the Act:

Fritz Lyne, Attorney for Respondent

George C. Dunlap, Attorney for Respondent

8.

All production and maintenance employees at Russell-Newman Manufacturing Co. Inc.'s Denton, Texas, plants, excluding designers, office clerical employees, guards and supervisors, as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

9.

On or about August 7, 1964, the Regional Director for the Sixteenth Region of the Board issued a Decision and Direction of Election in which

he found the unit described above in Paragraph 8, appropriate for the purpose of collective bargaining and on or about August 14, 1964, Respondent requested the Board to review said Decision and Direction of Election. In this request for review, Respondent alleged in substance that the unit found appropriate in the above described Decision and Direction of Election was inappropriate for the purpose of collective bargaining in that said appropriate unit should also include Respondent's plant located at Pilot Point, Texas, inasmuch as that plant, together with the unit found appropriate, constituted one single, integrated enterprise. On or about August 25, 1964, the Board granted Respondent's request for review of the Regional Director's Decision and Direction of Election of August 7, 1964. On or about December 7, 1964, the Board issued a decision on review, affirming the Regional Director's decision that the unit described above in Paragraph 8 was appropriate for the purpose of collective bargaining.

10.

On or about January 26, 1965, a majority of the employees of Respondent in the unit described above in Paragraph 8, by a secret ballot election conducted under the supervision of the Regional Director for the Sixteenth Region of the Board, selected Union as their representative for the purpose of collective bargaining with Respondent by a vote of 108 to 75.

11.

On or about January 29, 1965, Respondent timely filed objections to the conduct of the election and conduct affecting the results of the election conducted on January 26, 1965, with the Regional Director for the Sixteenth Region of the Board and Respondent simultaneously served copies of said objections upon Union. In these objections Respondent, in substance, contended:

- a. That Union distributed false and misleading campaign propaganda on the day before and on the day of the election. Copies of this propaganda were attached to and made a part of Respondent's objections.

b. That the mailing and distribution of the said propaganda was so timed as to prevent any reply by Respondent.

c. That the statements contained in the said propaganda couldn't be intelligently evaluated by Respondent's employees.

d. That the said propaganda was calculated to and did deceive Respondent's employees as to material facts.

e. That the said propaganda was calculated to and did have a significant impact on the election.

In these objections to the Regional Director, Respondent also requested said Regional Director to order and direct a hearing to take evidence pertaining to its objections enumerated above.

12.

On or about March 5, 1965, the Regional Director for the Sixteenth Region of the Board issued a Supplemental Decision and Certification of Representative in which he overruled Respondent's objections and denied Respondent's request for a hearing on its objections as described above in Paragraph 11 and certified Union as the exclusive collective bargaining representative of the unit of employees described above in Paragraph 8.

13.

On or about March 15, 1965, Respondent requested the Board to review the Regional Director's Supplemental Decision and Certification of Representative dated March 5, 1965. In this request for review, Respondent contended, in substance:

a. That the Regional Director's Supplemental Decision was clearly erroneous because the Regional Director failed and refused to grant Respondent's request for a hearing thereby depriving Respondent of an opportunity to present evidence and the right to cross-examine witnesses and denying it due process of the law within the meaning of the United States Constitution.

b. That the Regional Director's findings contained in his Supplemental Decision were arbitrary and capricious.

c. That the Regional Director's finding in his Supplemental Decision was erroneous for the reason that a substantial question of law and policy was raised because there was a direct departure from officially reported Board precedent and there was an absence of officially reported Board precedent to support the Regional Director in his findings.

Respondent, in this request for review, renewed and asserted all objections it had theretofore filed and prayed that the Board set aside said Regional Director's Supplemental Decision and Certification of Representative and order a new election or, alternatively, that the Board remand the case to said Regional Director and order him to hold complete and full hearing pertaining to all the disputed facts contained in Respondent's request for review. By telegram dated March 26, 1965, the Board denied this request for review.

14.

At all times since January 26, 1965, and continuing to date, Union has been the representative for the purpose of collective bargaining of the employees in the unit described above in Paragraph 8, and by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

15.

Commencing on or about March 5, 1965, and continuing to date and, more particularly, on or about March 5, 23 and 29, 1965, Union has requested and is requesting Respondent to bargain collectively with respect to rates of pay, wages, hours of employment and other terms and conditions of employment as the exclusive collective bargaining representative of all the employees of Respondent in the unit described above in Paragraph 8.

16.

Commencing on or about March 10, 1965, and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with Union as the collective bargaining representative of all the employees in the unit described above in Paragraph 8 and for the reasons stated in its request for review dated August 13, 1964, described above in Paragraph 9, in its objections to conduct affecting the results of election dated January 29, 1965, described above in Paragraph 11, its request for review dated March 15, 1965, described above in Paragraph 13, and its contention that the Regional Director's certification of Union as the collective bargaining representative of the employees described above in Paragraph 8 contained in his Supplemental Decision and Certification of Representative dated March 5, 1965, was invalid, Respondent has refused since on March 10, 1965, to bargain with Union as the collective bargaining representative of all the employees in the unit described above in Paragraph 8.

17.

On or about March 5, 23 and 29, 1965, and at all times since, Union has requested Respondent to furnish to Union data relating to Respondent's plans regarding the construction of new sewing facilities in Denton County, any proposed change of operations that affect the employees in the unit described above in Paragraph 8 and a list of all employees in the unit described above in Paragraph 8, along with their classification, seniority dates and rates of pay.

18.

Commencing on or about March 10, 1965, and continuing to date, and, more particularly, on or about March 10 and April 12, 1965, Respondent has refused and continues to refuse to furnish to Union data relating to Respondent's plans regarding the construction of new sewing facilities in Denton County, any proposed change of operations that affect the employees in the unit described above in Paragraph 8 and a list of all employees in the unit described above in Paragraph 8, along with their classification, seniority dates and rates of pay.

19.

By the acts described above in Paragraphs 16 and 18, and by each of said acts, Respondent did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

20.

By the acts described above in Paragraphs 16 and 18, Respondent did refuse and is refusing to bargain collectively with the representative of its employees and thereby did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

21.

The acts described above in Paragraphs 16 and 18, occurring in connection with the operations of Respondent described above in Paragraphs 2, 3 and 4, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 9th day of June 1965, at 10 o'clock in the forenoon (CST), in the hearing room of the National Labor Relations Board at its offices on the Sixth Floor of the Meacham Building located at 110 West Fifth Street, in the City of Fort Worth, Texas, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the Regional Director for the Sixteenth Region, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless it

does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

DATED at Forth Worth, Texas, this 6th day of May 1965.

/s/ Elmer Davis

 Regional Director
 National Labor Relations Board
 Sixteenth Region
 Sixth Floor, Meacham Building
 110 West Fifth Street
 Fort Worth, Texas 76102

GC EXHIBIT NO. 1(e)

RESPONDENT'S ORIGINAL ANSWER

TO THE HONORABLE TRIAL EXAMINER:

Now comes RUSSELL-NEWMAN MANUFACTURING COMPANY, INC., Respondent in the above captioned cause, and makes this, its Original Answer to the Complaint herein, and for such answer would show the Honorable Trial Examiner the following:

I.

That this Respondent, pursuant to Rule 12 of the Federal Rules of Civil Procedure, states that the Complaint herein has, on its face, failed to state a claim upon which relief can be granted. In this regard, Respondent would refer the Trial Examiner to Paragraphs 11 through 13 of the Original Complaint herein, in which Paragraphs the General Counsel duly sets out and alleges numerous grounds upon which Respondent had and has a right to rely in refusing to collectively bargain with the charging party herein. Therefore, Respondent herewith moves the Honorable Trial Examiner to dismiss the Complaint herein.

19.

By the acts described above in Paragraphs 16 and 18, and by each of said acts, Respondent did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

20.

By the acts described above in Paragraphs 16 and 18, Respondent did refuse and is refusing to bargain collectively with the representative of its employees and thereby did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

21.

The acts described above in Paragraphs 16 and 18, occurring in connection with the operations of Respondent described above in Paragraphs 2, 3 and 4, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 9th day of June 1965, at 10 o'clock in the forenoon (CST), in the hearing room of the National Labor Relations Board at its offices on the Sixth Floor of the Meacham Building located at 110 West Fifth Street, in the City of Fort Worth, Texas, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the Regional Director for the Sixteenth Region, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless it

does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

DATED at Forth Worth, Texas, this 6th day of May 1965.

/s/ Elmer Davis
Regional Director
National Labor Relations Board
Sixteenth Region
Sixth Floor, Meacham Building
110 West Fifth Street
Fort Worth, Texas 76102

GC EXHIBIT NO. 1(e)

RESPONDENT'S ORIGINAL ANSWER

TO THE HONORABLE TRIAL EXAMINER:

Now comes RUSSELL-NEWMAN MANUFACTURING COMPANY, INC., Respondent in the above captioned cause, and makes this, its Original Answer to the Complaint herein, and for such answer would show the Honorable Trial Examiner the following:

I

That this Respondent, pursuant to Rule 12 of the Federal Rules of Civil Procedure, states that the Complaint herein has, on its face, failed to state a claim upon which relief can be granted. In this regard, Respondent would refer the Trial Examiner to Paragraphs 11 through 13 of the Original Complaint herein, in which Paragraphs the General Counsel duly sets out and alleges numerous grounds upon which Respondent had and has a right to rely in refusing to collectively bargain with the charging party herein. Therefore, Respondent herewith moves the Honorable Trial Examiner to dismiss the Complaint herein.

II.

Respondent admits the allegations as contained in Paragraphs 1, 3, 4, 6, 12, 15, 17 and 18 of the Original Complaint herein.

III.

Respondent admits the allegations as contained in Paragraph 2 of the Original Complaint herein, excepting the allegation contained in the last sentence of said Paragraph, which allegation the Respondent denies and demands strict proof thereof.

IV.

As regards Paragraph 5 of the Original Complaint herein, Respondent says it cannot either admit or deny the allegations as contained in said Paragraph for the reason that it does not have sufficient information regarding said allegations, and Respondent demands strict proof thereof.

V.

Respondent denies the allegations as contained in Paragraph 7 of the Original Complaint herein and demands strict proof thereof.

VI.

Respondent denies the allegations as contained in Paragraph 8 of the Original Complaint herein and demands strict proof thereof.

VII.

Respondent admits the allegation as contained in the first sentence of Paragraph 9 of the Original Complaint herein.

Respondent cannot either admit or deny the allegation contained in the second sentence of said Paragraph 9 of the Original Complaint herein for the reason that said allegation is a mere conclusion of the General Counsel and is an interpretation by the General Counsel of matters contained in a written instrument. In this regard, Respondent asserts that the written instrument referred to in said Paragraph is and would be the

the best evidence of the contents of such instrument.

Respondent admits the allegations contained in the last two sentences of Paragraph 9 of the Original Complaint herein.

VIII.

As regards Paragraph 10 of the Original Complaint herein, Respondent admits only the results of the election referred to in such Paragraph as contained in the official Tally of Ballots, and Respondent specifically denies all conclusions as regards said Tally of Ballots.

IX.

Respondent admits the allegations as contained in the first and last sentences of Paragraph 11 of the Original Complaint herein.

Respondent cannot either admit or deny the allegations as contained in the remainder of said Paragraph 11 of the Original Complaint herein for the reason that said allegations are mere conclusions of the General Counsel and are interpretations by the General Counsel of matters contained in a written instrument. In this regard, Respondent asserts that the written instrument referred to in said Paragraph is and would be the best evidence of the contents of such instrument.

X.

Respondent admits the allegations as contained in the first and last sentences of Paragraph 13 of the Original Complaint herein.

Respondent cannot either admit or deny the allegations as contained in the remainder of said Paragraph 13 of the Original Complaint herein for the reason that said allegations are mere conclusions of the General Counsel and are interpretations by the General Counsel of matters contained in a written instrument. In this regard, Respondent asserts that the written instrument referred to in said Paragraph is and would be the best evidence of the contents of such instrument.

XI.

Respondent denies the allegations as contained in Paragraph 14 of

the Original Complaint herein and demands strict proof thereof.

XII.

Respondent cannot either admit or deny the allegations as contained in Paragraph 16 of the Original Complaint herein for the reason that the same are mere conclusions of the General Counsel and are mere interpretations by General Counsel of the Respondent's position herein, which conclusions and interpretations General Counsel has no right or power to make.

XIII.

Respondent denies the allegations as contained in Paragraphs 19, 20 and 21 of the Original Complaint herein and demands strict proof thereof.

XIV.

Respondent herewith affirmatively asserts and renews all of its allegations and objections and further reasserts and renews all positions taken by Respondent in the following:

- (1) The hearing to determine an appropriate unit for bargaining held at Denton, Texas on or about April 20, 1964 in Case No. 16-RC-3714.
- (2) Respondent's Request For Review in Case No. 16-RC-3714 filed with the National Labor Relations Board on or about the 14th day of August, 1964, such instrument requesting review of the unit determination made by the Regional Director of the Sixteenth Region in Case No. 16-RC-3714.
- (3) Employer's Objections To Conduct Affecting Results of Election filed with the Regional Director of the Sixteenth Region on or about the 29th day of January, 1965 in Case No. 16-RC-3714,

such instrument raising objections to the representation election held on the 26th day of January, 1965.

- (4) Respondent's Request For Review filed with the National Labor Relations Board in Washington, D. C. in Case No. 16-RC-3714 on or about the 16th day of March, 1965, such instrument requesting the Board to review the Supplemental Decision and Certification of Representative issued by the Regional Director of the Sixteenth Region on or about the 5th day of March, 1965.

XV.

Respondent has never been granted by the Regional Director of the Sixteenth Region, nor by the National Labor Relations Board in Washington, D. C., a hearing of any nature whatsoever concerning the Employer's Objections To Conduct Affecting Results Of Election filed in Case No. 16-RC-3714, regarding the election held on January 26, 1965. Respondent affirmatively requested such hearing. Nonetheless, the Regional Director of the Sixteenth Region totally failed to grant such hearing and proceeded to issue his Supplemental Decision and Certification of Representative in Case No. 16-RC-3714, such Decision and Certification based purely upon an ex-parte investigation by the Regional Director.

Respondent here asserts that this action on the part of the Regional Director in denying it a hearing in this matter and proceeding to issue his Decision and Certification based entirely upon his own ex-parte investigation was a denial to Respondent of due process as provided for under the United States Constitution and under the Administrative Procedure Act.

WHEREFORE, this Answer considered, Respondent prays that the Trial Examiner dismiss the Complaint herein.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: /s/ Fritz Lyne

By: /s/ George C. Dunlap

4000 First National Bank Bldg.
Dallas, Texas 75202
Riverside 1-4871

Attorneys for Respondent

[Certificate of Service]

GC EXHIBIT NO. 1(f)

**MOTION TO STRIKE PORTIONS OF RESPONDENT'S ANSWER TO
COMPLAINT AND MOTION FOR JUDGMENT ON THE PLEADINGS**

Comes now Counsel for the General Counsel and moves that the answer filed by Russell-Newman Manufacturing Co., Inc., hereinafter called Respondent, be stricken and that judgment on the pleadings be entered against Respondent. In support of this motion, Counsel for the General Counsel avers as follows:

1.

In Paragraph IV of its answer, Respondent refuses to admit, but does not deny, the allegations contained in Paragraph 5 of the Complaint. In a Decision and Direction of Election dated August 7, 1964, issued by the Regional Director for the Sixteenth Region of the Board, in Case No. 16-RC-3714, it was found that the International Ladies' Garment Workers' Union, AFL-CIO, was a labor organization. (See Exhibit 1 attached hereto and made a part hereof.) Respondent is attempting to relitigate an issue raised and decided in an earlier related representation proceeding.

Its pleading is a sham and is frivolous. Counsel for the General Counsel moves that Paragraph IV of Respondent's answer be stricken and that Paragraph 5 of the Complaint be deemed admitted.

2.

In Paragraph V of its answer, Respondent denies the allegations contained in Paragraph 7 of the Complaint. Attorneys Fritz L. Lyne and George C. Dunlap have filed on behalf of Russell-Newman Manufacturing Co., Inc., in Case No. 16-RC-3714 a Request for Review filed on August 14, 1964 (Exhibit 2 attached hereto and made a part hereof), Objections to Conduct Affecting Results of Election filed January 29, 1965 (Exhibit 6 attached hereto and made a part hereof), and a Request for Review filed March 15, 1965 (Exhibit 8 attached hereto and made a part hereof). On March 5, 23 and 29, the International Ladies' Garment Workers' Union, through its Attorney David R. Richards, by letter requested Respondent to bargain with the Union as the collective representative of Respondent's employees (see Exhibits 9, 11 and 13, respectively, which are attached hereto and made a part hereof). These requests were answered by letters from Fritz Lyne or George Dunlap dated March 10, April 1 and April 12, 1965. (See Exhibits 10, 14 and 15, respectively, which are attached hereto and made a part hereof.) Attorneys Fritz L. Lyne and George C. Dunlap have acted as agents for Respondent in the related representation proceeding, Case No. 16-RC-3714, in the events leading up to the present complaint and indeed by filing Respondent's answer to the Complaint. Counsel for the General Counsel moves that Paragraph V of Respondent's answer be stricken as a sham and frivolous pleading and that Paragraph 7 of the Complaint be deemed admitted.

3.

In Paragraph VI of its answer Respondent denies the allegation contained in Paragraph 8 of the Complaint. In a Decision and Direction of Election dated August 7, 1964, issued by the Regional Director for the Sixteenth Region of the Board, in Case No. 16-RC-3714, the Unit set forth

in Paragraph 8 of the Complaint was found appropriate. (See Exhibit 1.) Respondent is attempting to relitigate issues in a Complaint proceeding which were raised and determined in an earlier related representation case. Its pleading is a sham and is frivolous. Counsel for the General Counsel moves that Paragraph VI of Respondent's answer be stricken and that Paragraph 8 of the Complaint be deemed admitted.

4.

In Paragraphs VII, IX and X, Respondent admits portions of Paragraphs 9, 11 and 13, respectively, of the Complaint but avers, however, that the documents referred to in those paragraphs are the best evidence of its position. Counsel for the General Counsel, therefore, attaches and makes a part hereof Exhibit 2, Respondent's Request for Review, filed on August 14, 1965; Exhibit 3, the Board's Order granting Respondent's Request for Review dated August 25, 1965; Exhibit 4, the Board's Decision and Review dated December 7, 1964; Exhibit 6, Respondent's Objections to the Conduct Affecting Results of Election dated January 29, 1965; Exhibit 8, Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Representative filed March 15, 1965; Exhibit 12, Board's Denial of request for review dated March 26, 1965.

5.

In Paragraph VIII of its answer, Respondent, in effect, denies the allegations of Paragraph 10 of the Complaint. On January 26, 1965, the Regional Director, Sixteenth Region of the Board, issued a Tally of Ballots showing the results of an election held on that date. (See Exhibit 5 attached hereto and made a part hereof.) On March 5, 1965, the Regional Director for the Sixteenth Region of the Board, issued a Supplemental Decision and Certification of Representative overruling Respondent's objections to that election and certifying the International Ladies' Garment Workers' Union, AFL-CIO, as the representative of Respondent's employees in the unit

described in Paragraph 8 of the Complaint. (See Exhibit 7 attached hereto and made a part hereof.) Respondent's subsequent Request for Review of the Regional Director's Supplemental Decision and Certification of Representative was denied by the Board. (See Exhibit 12 attached hereto and made a part hereof.) Respondent is attempting to relitigate issues raised and decided in a prior related representation proceeding. Its pleading is a sham and frivolous. Counsel for the General Counsel moves that Paragraph VIII of Respondent's answer be stricken and that Paragraph 10 of the Complaint be deemed admitted.

6.

In Paragraph XI of its answer, Respondent denies the allegations contained in Paragraph 14 of the Complaint. The Union received a majority of the votes cast in the representation election held on January 26, 1965, (see Exhibit 5) and was subsequently certified by the Regional Director of the Sixteenth Region of the Board (see Exhibit 7). Respondent is attempting to relitigate issues raised and decided in a prior related representation proceeding. Its pleading is a sham and is frivolous. Counsel for the General Counsel moves that Paragraph XI of Respondent's answer be stricken and that Paragraph 14 of the Complaint be deemed admitted.

7.

In Paragraph XII of its answer, Respondent refuses to either admit or deny the allegations contained in Paragraph 16 of the Complaint. The Union made written request upon Respondent for collective bargaining (Exhibits 9, 11 and 13). Respondent, by letter, refused (Exhibits 10, 14 and 15). Respondent's pleading is a sham and is frivolous. Counsel for the General Counsel moves that Paragraph XII of Respondent's answer be stricken and that Paragraph 16 of the Complaint be deemed admitted.

8.

In Paragraph XIII of its answer, Respondent denies the allegations contained in Paragraphs 19, 20 and 21 of the Complaint. In view of

Respondent's admission to the allegations contained in Paragraphs 1, 2, 3, 4, 6, 9, 11, 12, 13, 15, 17 and 18 and of the Motions to Strike contained above, Counsel for the General Counsel moves that Paragraph XIII of Respondent's answer be stricken and that Paragraphs 19, 20 and 21 of the Complaint be deemed admitted.

9.

In Paragraph XIV and XV of its answer, Respondent raises issues concerning the prior related representation case, Case No. 16-RC-3714. Respondent is attempting to relitigate issues previously raised and decided. Its pleading is a sham and is frivolous. Counsel for the General Counsel moves that Paragraphs XIV and XV of Respondent's answer be stricken.

**ARGUMENT IN SUPPORT OF COUNSEL FOR THE GENERAL COUNSEL'S
MOTION TO STRIKE AND FOR JUDGMENT ON THE PLEADINGS**

An examination of Respondent's answer makes it quite obvious that Respondent is attempting to relitigate issues concerning the prior related representation case in this unfair labor practice proceeding. The Board's Rules and Regulations, Section 102.67, Series 8, as amended, provide, in part:

Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

The Board has also taken this position in its decisions. Mountain States Telephone & Telegraph Co., 136 NLRB 1612, enfd. 310 F. 2d 478 (C.A. 10), cert. denied 371 U.S. 875. O. K. Van and Storage, Inc., 127 NLRB 1537. The courts have agreed: NLRB v. Zelrich Company, C. A. No. 21482, May 11, 1965, (C. A. 5); NLRB v. Schill Steel Products, Inc., (C.A. 5), 58 LRRM 2177, 2181; NLRB v. Manning, Maxwell & Moore, Incorporated, 324 F.2d 857, (C. A. 5). enfg. 143 NLRB 5; NLRB v. O. K. Van and Storage, Inc., 297 F. 2d 74, (C. A. 5). Respondent's answer raises no issue not already disposed of in the representation proceeding.

WHEREFORE the Counsel for the General Counsel prays that the Trial Examiner:

(1) Grant General Counsel's motion to strike portions of Respondent's answer to Complaint and find all of the allegations of the Complaint to be true and;

(2) Grant General Counsel's motion for judgment on the pleadings and issue a decision finding all violations of the Act as alleged.

DATED at Fort Worth, Texas, this 18th day of May 1965.

**James A. King
Counsel for the General Counsel
National Labor Relations Board
Sixteenth Region
Sixth Floor, Meacham Building
110 West Fifth Street
Fort Worth, Texas 76102**

(Certificate of Service)

Attached Exhibit 1 appears at Joint Appendix page 15.

Attached Exhibit 2 appears at Joint Appendix page 18.

Attached Exhibit 3 appears at Joint Appendix page 24.

Attached Exhibit 4 appears at Joint Appendix page 24.

Attached Exhibit 5 appears at Joint Appendix page 28.

Attached Exhibit 6 appears at Joint Appendix page 30.

Attached Exhibit 7 appears at Joint Appendix page 44.

Attached Exhibit appears at Joint Appendix page 36.

Attached Exhibit appears at Joint Appendix page 42.

Attached Exhibit appears at Joint Appendix page 37.

Attached Exhibit appears at Joint Appendix page 40.

Attached Exhibit appears at Joint Appendix page 41.

Attached Exhibit appears at Joint Appendix page 43.

Attached Exhibit appears at Joint Appendix page 49.

Attached Exhibit 8 appears at Joint Appendix page 50.

March 5, 1965

Russell-Newman Manufacturing Co., Inc.
Denton Factory
Denton, Texas

Attention: Mr. Frank Martino

Gentlemen:

This letter is written on behalf of the International Ladies Garment Workers Union, AFL-CIO and concerns the recent announcement of your company's intent to commence operations in a new plant in Saint Jo, Texas.

As the representative of your employees in your Denton sewing and cutting plants the International Ladies Garment Workers Union is, of course, pleased to see that the company is prospering sufficiently to warrant the opening of new operations. However, this letter is to put you on notice that should there be any intention or even consideration given to diverting any production work from the Denton operations to the projected Saint Jo operations the union requests an opportunity to meet and negotiate any such possibilities. As the bargaining representative of a majority of the employees in the Denton operations of Russell-Newman Manufacturing Company, the union is entitled to reasonable notice and an opportunity to negotiate concerning possible changes in operations that could affect the work of the employees in Denton.

The union is prepared to establish, by any appropriate means, its continuing majority among the Russell-Newman employees in Denton, Texas. Thus, this letter is to put you on notice of the continued majority status of the International Ladies Garment Workers Union and its desire to negotiate concerning any possible alterations in the Denton operations.

Further, we request at this time information in regard to the company's intentions, if any, in respect to the construction of new sewing facilities in Denton County. The union needs this information in order to properly represent the employees that have designated it as bargaining representative.

We appreciate your attention to these matters.

Sincerely,

MULLINAX, WELLS, MORRIS & MAUZY

By: David R. Richards
Attorney for the International
Ladies Garment Workers Union,
AFL-CIO

Receipt for Certified Mail
sent to Russell-Newman Mfg.
Denton, Texas
No. 334813

GC EXHIBIT NO. 1(f) cont'd
Exhibit No. 10

*** LYNE, BLANCHETTE, SMITH & SHELTON ***

Attorneys at Law
Dallas, Texas

March 10, 1965

Mr. David R. Richards
Attorney for the
International Ladies Garment
Workers Union, AFL-CIO
1601 National Bankers Life Bldg.
Commerce and Ervay Streets
Dallas, Texas

Re: Russell-Newman Manufacturing
Company, Inc. and the
International Ladies Garment
Workers Union, AFL-CIO

Dear Mr. Richards:

This letter is an answer to your letter of March 5, 1965, the original of which was addressed to Russell-Newman Manufacturing Company, Inc. in Denton, Texas, to the attention of Mr. Frank Martino.

Russell-Newman Manufacturing Company, Inc. does not now recognize the International Ladies Garment Workers Union, AFL-CIO as the legal representative of a majority of its employees. Russell-Newman Manufacturing Company, Inc. continues, as in the past, to have strong doubts concerning your claim to a representation of a majority of its employees. It is the Company's position that without the rank misrepresentation made by the union one day prior to the election held at the plant, the union would have been overwhelming defeated by the rank and file employees of Russell-Newman Manufacturing Company, Inc.

Because of the above, all your requests for information, as outlined in your March 5, 1965 letter, are herewith refused.

Yours very truly,

LYNE, BLANCHETTE, SMITH & SHELTON

FLL/nh

GC EXHIBIT NO. 1(f) cont'd
Exhibit No. 11

March 23, 1965

Russell-Newman Manufacturing Company, Inc.
Denton Factory
Denton, Texas

Attn: Mr. Frank Martino

Dear Sir:

This letter is written on behalf of International Ladies' Garment Workers Union, AFL-CIO, as the majority representative of the employees in your Denton, Texas operation. As in our earlier letters, the majority status of the ILG continues undiminished and the union continues to assert its right to recognition under the provisions of Labor-Management Relations Act as amended.

On behalf of the union, and in anticipation of an early commencement of collective bargaining negotiations, this is to advise that the following persons constitute the union negotiating committee for your Denton operations:

Rita Bishop	Thelma Mills
Ruby Christian	Jan Murray
Corrinne Cole	Patsy Patterson
Ruby Davis	Ethel Pickle
Naomi Erwin	Louise Price
Margaret Felts	Alma Sills
Mary George	Betty Stanford
Marie Hill	Joan Stubblefield
Belle Hausden	Winnie Tutt
Lillian Kennemer	Nell Weaver
Jimmie Marion	Ruby Young

Since our letter of March 5th, the union has new reports of changes in operations in the Denton, Texas operation. These changes have been made without notice to the union as collective bargaining representative and reflect an attitude inconsistent with the employer's obligations under the Labor-Management Relations Act. This is to request again that the union be given notice and an opportunity to consult with the employer concerning any proposed change of operations that affect the employees in the collective bargaining unit.

Thank you for your attention to this matter.

Sincerely,

MULLINAX, WELLS, MORRIS & MAUZY

By:

Attorneys for International
Ladies' Garment Workers Union

Receipt for Certified Mail

No. 198205

Dated 3/23/65

Attached Exhibit 12 appears at Joint Appendix page 58.

Law Offices Of

MULLINAX, WELLS, MORRIS & MAUZY

March 29, 1965

Russell-Newman Manufacturing Company, Inc.
Denton Factory
Denton, Texas

Attention: Mr. Frank Martino

Dear Sir:

In keeping with the certification by the National Labor Relations Board of the International Ladies' Garment Workers Union, AFL-CIO, as the collective bargaining representative of your employees in your Denton, Texas operations, this letter is to request, on behalf of the Union, an early bargaining meeting. In order that preliminary matters might be disposed of as early as possible, on behalf of the Union this is to request a meeting of either Friday, April 2, 1965 or Monday, April 5, 1965, at a time and place to suit your convenience. If you prefer to meet somewhere other than at the company's premises please let us know and we will make arrangements for a private room. I would like to suggest that we meet at 10:00 a.m. on either of these days, however, if this is not convenient, anytime suggested by yourself will be satisfactory.

I would appreciate your early response to this letter and in the meantime I would like to renew the Union's request by my letters of March 5th and March 23d that the Union be given notice of any contemplated changes in operation that might affect the Denton, Texas operation.

Although I realize it may be impossible to have available this week, as early as possible the union would like to have a list of all employees employed within the bargaining unit in the Denton, Texas operations with their classifications, seniority dates and rates of pay. Such information is, of course, necessary in order to properly fulfill the Union's role as bargaining representative.

We would appreciate it if you would at your earliest convenience prepare such a list and make it available to us.

In the meantime, I hope you will find it possible to meet on either April 2d or April 5th and I look for your early response to this request. Thank you for your attention.

Sincerely,

MULLINAX, WELLS, MORRIS & MAUZY

By: David R. Richards

DRR/sk

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: Mr. John Vickers
International Ladies' Garment Workers Union
1000 Main Street
Dallas, Texas

Lyne, Blanchette, Smith & Shelton
11th Floor Adolphus Tower
Dallas, Texas

GC EXHIBIT NO. 1(f) cont'd
Exhibit No. 14

LYNE, BLANCHETTE, SMITH & SHELTON
Attorneys at Law
Dallas, Texas

April 1, 1965

Mr. David R. Richards
Attorney at Law
1601 National Bankers Life Bldg.
Dallas, Texas

Re: Russell-Newman Manufacturing Co., Inc.

Dear Mr. Richards:

Your letter of March 29, 1965 has been referred to myself and Mr. Fritz Lyne of our firm for answer.

Both Mr. Lyne and myself are involved in the trial of a case this week and will not have a chance to give this letter our attention. As soon as we are out of trial, we will consider same and give you a reply thereto.

Kindest personal regards.

Yours very truly,

GEORGE C. DUNLAP

GCD:cc

cc: Mr. Frank Martino
Russell-Newman Mfg. Co., Inc.
Denton, Texas

GC EXHIBIT NO. 1(f) cont'd
Exhibit No. 15

LYNE, BLANCHETTE, SMITH & SHELTON
Attorneys at Law
Dallas, Texas

April 12, 1965

Mr. David R. Richards
Attorney at Law
1601 National Bankers Life Bldg.
Dallas, Texas

Re: Russell-Newman Manufacturing Company, Inc.
and International Ladies' Garment Workers,
AFL-CIO
Case No. 16-RC-3714

Dear Mr. Richards:

As I stated to you in my April 1, 1965 letter, your letter of March 29, 1965 to Mr. Frank Martino has been referred to us for answer.

As my letter of April 1, 1965 also explained, we have not been able to answer this letter until this date because both Mr. Lyne and myself have been tied up in the trial of an unfair labor complaint. Please excuse the delay.

It is our position and the position of our client that the certification by the National Labor Relations Board of the International Ladies' Garment Workers, AFL-CIO, as collective bargaining agent for the employees of Russell-Newman Manufacturing Company, Inc., is invalid. It is our position that this certification is invalid because, among other

reasons, the election upon which this certification is based was invalid for the reasons that are set out in the Employer's Objections To Conduct Affecting The Results of Election filed in this case. We feel that the misrepresentations committed by your client during this election campaign were to such an extent and of such a nature as to negate a free choice by our employees in the election. We, therefore, now, as in the past, have strong doubts that your client represents a majority of our employees. Further, we, of course, do not now and have never in the past agreed that there was an appropriate unit designated in this matter.

For the above reasons, among others, we respectfully refuse your requests and demands made in your March 29, 1965 letter.

Yours very truly,

GEORGE C. DUNLAP

cc: Mr. Frank Martino

General Counsel's Exhibit 1(g)

ORDER REFERRING MOTIONS TO TRIAL EXAMINER FOR RULING

On May 18, 1965, Counsel for the General Counsel in the above-entitled matter filed with the undersigned a Motion to Strike Portions of Respondent's Answer to Complaint and Motion for Judgment on the Pleadings.

IT IS HEREBY ORDERED, Pursuant to Section 102.25 of the Board's Rules and Regulations, Series 8, as amended, that said Motions be, and the same hereby are, referred to the Trial Examiner for ruling.

Dated at Fort Worth, Texas, this 18th day of May 1965.

Hugh Frank Malone
Acting Regional Director
National Labor Relations Board
Sixteenth Region
Sixth Floor, Meacham Building
110 West Fifth Street
Fort Worth, Texas 76102

General Counsel's Exhibit 1(i)

REQUEST FOR ADMISSIONS

**TO: THE HONORABLE ELMER DAVIS
REGIONAL DIRECTOR FOR THE SIXTEENTH REGION
OF THE NATIONAL LABOR RELATIONS BOARD**

Please admit or deny under oath the following statements, specifically and separately, and serve a copy of your answers on the undersigned within eleven (11) days of your receipt hereof. Please be on notice that under the Federal Rules of Civil Procedure a failure on your part to either specifically admit or deny each request or to fully explain why you cannot admit or deny each request will result in the request being deemed admitted for all purposes:

- (1) That on January 23, 1965, the International Ladies' Garment Workers' Union, AFL-CIO, caused to be mailed to employees of Russell-Newman Manufacturing Company, Inc. in Denton, Texas the letter which is attached to these requests and marked as Exhibit "A".
- (2) That on January 23, 1965, the International Ladies' Garment Workers' Union, AFL-CIO caused to be mailed in the same envelope with Exhibit "A", attached hereto, a "newsletter" dated January 25, 1965, a copy of which is attached hereto and marked Exhibit "B".
- (3) That January 23, 1965 fell on a Saturday.
- (4) That Exhibits "A" and "B", attached hereto, were received by employees of Russell-Newman Manufacturing Company, Inc. at Denton, Texas on January 25, 1965, or thereafter.
- (5) That on the afternoon of January 25, 1965, the International Ladies' Garment Workers' Union, AFL-CIO, caused to be handed to employees of Russell-Newman Manufacturing Company, Inc., who were eligible to vote in the representation election of January 26, 1965, a handbill, a copy of which handbill is attached hereto and marked Exhibit "C".

- (6) That on the morning of January 26, 1965, the International Ladies' Garment Workers' Union, AFL-CIO caused to be handed to employees of Russell-Newman Manufacturing Company, Inc., who were eligible to vote in the representation election of January 26, 1965, a handbill, a copy of which handbill is attached hereto and marked Exhibit "D".
- (7) That a representation election was held on the premises of Russell-Newman Manufacturing Company, Inc. in Denton, Texas on the afternoon of January 26, 1965 between the hours of 2:00 p.m. and 4:30 p.m.
- (8) That the mailing and distribution of Exhibits "A", "B", "C" and "D", attached hereto, to Denton, Texas employees of Russell-Newman Manufacturing Company, Inc. was so timed as to prevent any replies thereto by Russell-Newman Manufacturing Company, Inc.
- (9) That Laredo Mfg. Co. is a manufacturer of dresses.
- (10) That Laredo Mfg. Co. employs most of its workers on a piece-work basis.
- (11) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. provides in part, with respect to employees on a piece-work basis, that commencing July 6, 1965 said employees will have a starting minimum rate of \$1.25 per hour, which rate increases to \$1.35 per hour after four (4) months of employment and increases to \$1.40 per hour after six (6) months of employment.
- (12) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. provides in part that on September 6, 1965 the minimum starting rate will be \$1.25 per hour, which rate will increase to \$1.40 per hour after four (4) months of employment and to \$1.50 per hour after six (6) months of employment.

- (13) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. provides in part that hourly paid employees of Laredo Mfg. Co. will receive compensation wage rates to \$1.40 per hour maximum, with no provision for further wage increases.
- (14) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. provides in part that the number of hours worked by the employees of Laredo Mfg. Co. shall be reduced from 37-1/2 hours to 35 hours per week.
- (15) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. providing for increases in pay to the employees of Laredo Mfg. Co. was granted to compensate for a reduction in working hours.
- (16) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Kabro, Inc. of Houston, Texas provides in part that hourly workers' wage rates are to escalate from \$1.25 per hour to \$1.50 per hour over a three-year period.
- (17) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Kabro, Inc. of Houston, Texas provides in part that the minimum wage of \$1.60 per hour applies to only piece-work employees.
- (18) That the employees of Kabro, Inc. of Houston, Texas who are allowed more than \$1.60 per hour, under the terms of the contract between International Ladies' Garment Workers' Union, AFL-CIO and Kabro, Inc., are all piece-work employees.
- (19) That under the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Kabor, Inc. of Houston, Texas, the 25 cents an hour increase for hourly workers at Kabro, Inc. was not a lump sum increase, but was and is to occur over a three-year period.

- (20) That the Shipping Department of Kabro, Inc. of Houston, Texas is non-union.
- (21) That the Shipping Department of Kabro, Inc. of Houston, Texas is not under a union contract.
- (22) That the Shipping Department of Kabro, Inc. of Houston, Texas was not, in January of 1965, under a union contract.
- (23) That the Shipping Department of Kabro, Inc. of Houston, Texas has never been under a union contract.
- (24) That on January 23, 1965, the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas had been negotiating on a new union contract for approximately two (2) months.
- (25) That in the union contract negotiations between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas, the Nardis Company did not, at the "start of talk for a new union contract", offer the union a 15 cent raise in minimum wages.
- (26) That in the negotiations for a union contract between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas, the original offer made by the Nardis Company was a 5 cent increase for the first year of a three-year contract, and a 4 cent increase each for the second and third years of the contract.
- (27) That during the week beginning January 18, 1965, in the negotiations for a contract between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas, the Nardis Company's offer to the union was increased from a 5 cent increase for the first year to a 7-1/2 cent increase for the first year, with a 4 cent increase each for the second and third years of the contract.

- (28) That prior to January 23, 1965, in the negotiations between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas, the Nardis Company had taken no position, favorable or unfavorable as to granting a two-weeks paid vacation to its employees who had worked two (2) years or longer.
- (29) That in the union contract negotiations between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company, the Nardis Company made an original offer of three-weeks paid vacation for any employee who had been employed for over twenty (20) years.
- (30) That in the contract negotiations between International Ladies' Garment Workers' Union, AFL-CIO, and the Nardis Company of Dallas, Texas, the International Ladies' Garment Workers' Union, AFL-CIO countered to the offer described in No. (29) above with a demand for a two-weeks paid vacation for any employee who had been employed for over two (2) years.
- (31) That as of January 23, 1965, the negotiations on a contract between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas had proceeded no further on the issue of paid vacations than is described in Nos. (29) and (30) above.
- (32) That none of the manufacturers mentioned in Exhibits "A" through "D", attached hereto, are competitors of Russell-Newman Manufacturing Company, Inc.
- (33) That none of the Exhibits "A" through "D", attached hereto, were placed in the hands of a majority of the employees of Russell-Newman Manufacturing Company, Inc. earlier than twenty-four (24) hours prior to the representation election held on January 26, 1965.

- (34) That in the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Bobbie Brooks, Inc., which was in effect on January 23, 1965, time workers were given wage increases ranging from 22 cents to 25 cents per hour over the three-year period of the contract.
- (35) That in the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Bobbie Brooks, Inc., which was in effect on January 23, 1965, the minimum wage rates for piece-workers were increased from \$1.60 per hour in 1964 to \$1.73 per hour in 1967.
- (36) That in the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Bobbie Brooks, Inc., which was in effect on January 23, 1965, the minimum wage rates for time workers, excluding cutters, were increased from 20 cents to 35 cents per hour above the Federal \$1.25 hourly wage.
- (37) That Exhibit "A", attached hereto, contains false and/or misleading statements.
- (38) That Exhibit "B", attached hereto, contains false and/or misleading statements.
- (39) That Exhibit "C", attached hereto, contains false and/or misleading statements.
- (40) That Exhibit "D", attached hereto, contains false and/or misleading statements.
- (41) That Exhibit "A", attached hereto, was sent to the majority of the employees of Russell-Newman Manufacturing Company, Inc. who were eligible to vote in the January 26, 1965 representation election for the purpose of misleading the said employees.
- (42) That Exhibit "B", attached hereto, was sent to the majority of the employees of Russell-Newman Manufacturing Company, Inc. who were eligible to vote in the January 26, 1965 representation election for the purpose of misleading the said employees.

- (43) That Exhibit "C", attached hereto, was handed to the majority of the employees of Russell-Newman Manufacturing Company, Inc. who were eligible to vote in the January 26, 1965 representation election for the purpose of misleading the said employees.
- (44) That Exhibit "D", attached hereto, was handed to the majority of the employees of Russell-Newman Manufacturing Company, Inc. who were eligible to vote in the January 26, 1965 representation election for the purpose of misleading the said employees.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: _____

Fritz Lyne

By: _____

George C. Dunlap

4000 First National Bank Bldg.

Dallas, Texas 75202

Riverside 1-4871

Attorneys for Respondent

(Certificate of Service)

Attached Exhibit "A" appears at Joint Appendix page 36.

Attached Exhibit "B" appears at Joint Appendix page 37.

Attached Exhibit "C" appears at Joint Appendix page 40.

Attached Exhibit "D" appears at Joint Appendix page 41.

Attached Exhibit appears at Joint Appendix page 42.

General Counsel's Exhibit 1(j)

MOTION OF DISCOVERY

TO THE HONORABLE TRIAL EXAMINER:

Now comes RUSSELL-NEWMAN MANUFACTURING COMPANY, INC., Respondent in the above captioned and-numbered cause, and moves the Trial Examiner for an Order requiring the Honorable Elmer Davis, Regional Director, National Labor Relations Board, Sixteenth Region, Fort Worth, Texas, to produce and to permit Respondent to inspect and to copy each of the following documents:

- (1) The collective bargaining contract between Amedee Frocks and Laredo Mfg. Co. and the International Ladies' Garment Workers Union, AFL-CIO; being the same contract as is referred to in the Supplemental Decision and Certification of Representative issued by the said Regional Director in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".
- (2) The written instrument encompassing the agreement between Kabro, Inc. of Houston, Texas and the International Ladies' Garment Workers Union, AFL-CIO, which agreement was reached in April, 1964; being the same agreement as is referred to in the Supplemental Decision and Certification of Representative issued by the said Regional Director in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".
- (3) The expired collective bargaining agreement between Bobbie Brooks, Inc. and the International Ladies' Garment Workers Union, AFL-CIO, being the same agreement as is referred to in the Supplemental Decision and Certification of Representative issued by the said Regional Director in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".

- (4) All written correspondence and memorandums of any nature whatsoever now in the files or under the control of said Regional Director, which correspondence and memorandums in any way, directly or indirectly, entered into or were received in connection with the Supplemental Decision and Certification of Representative in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".
- (5) All written statements of witnesses in the files or under the control of the said Regional Director taken in the investigation of Employer's Objections To Conduct Affecting the Results of Election in Case No. 16-RC-3714 by the said Regional Director, and any written statements of witnesses which in any way, directly or indirectly, entered into or were received in connection with the Supplemental Decision and Certification of Representative in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: _____
Fritz Lyne

By: _____
George C. Dunlap

4000 First National Bank Bldg.
Dallas, Texas 75202
Riverside 1-4871

THE STATE OF TEXAS
COUNTY OF DALLAS

AFFIDAVIT

BEFORE ME, a Notary Public in and for said County and State, on this day personally appeared GEORGE C. DUNLAP, who, after being by me duly sworn, upon his oath stated:

"That Exhibit "A" attached to this Motion is a true and correct copy of the Supplemental Decision and Certification of Representative in Case No. 16-RC-3714, as received by Respondent. That in said Decision the Regional Director relied in part, as can be seen from the reading of such Decision upon the collective bargaining contract between Amedee Frocks and Laredo Mfg. Co. and the International Ladies' Garment Workers Union, AFL-CIO, and upon the written instrument encompassing the agreement between Kabro, Inc. of Houston, Texas and the International Ladies' Garment Workers Union, AFL-CIO, and upon the expired collective bargaining agreement between Bobbie Brooks, Inc. and the International Ladies' Garment Workers Union, AFL-CIO, and upon certain unknown witnesses and/or correspondence concerning the state of negotiations between the International Ladies' Garment Workers Union, AFL-CIO and various companies.

That the above documents and materials are relevant to this proceeding for the reason that Respondent heretofore in Case No. 16-RC-3714 filed its Objections To Conduct Affecting The Results of Election, such objections being that the International Ladies' Garment Workers Union, AFL-CIO had made material misrepresentations in its campaign literature preceding the representation election of January 26, 1965.

That this Respondent has never been allowed a hearing by the Regional Director nor by the National Labor Relations Board, and, therefore, has never been allowed to come forward with its own evidence on the issue of material misrepresentations by the International Ladies' Garment Workers Union, AFL-CIO. The above requested documents and other material bear directly upon this issue and are necessary and the best evidence to Respondent in order to prove its allegations."

/s/

George C. Dunlap

(Certificate of Service)

Attached Exhibit appears at Joint Appendix page 49.

MOTION OF DISCOVERY

Now comes RUSSELL-NEWMAN MANUFACTURING COMPANY, INC., Respondent in the above captioned and numbered cause, and moves the Trial Examiner for an Order requiring the International Ladies' Garment Workers' Union, AFL-CIO to produce and to permit Respondent to inspect and to copy each of the following documents:

- (1) The collective bargaining contract between Amedee Frocks and Laredo Mfg. Co. and the International Ladies' Garment Workers' Union, AFL-CIO, being the same contract as is referred to in the Supplemental Decision and Certification of Representative issued by the Regional Director for the Sixteenth Region of the National Labor Relations Board in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".
- (2) The written instrument encompassing the agreement between Kabro, Inc. of Houston, Texas and the International Ladies' Garment Workers' Union, AFL-CIO, which agreement was reached in April, 1964; being the same agreement as is referred to in the Supplemental Decision and Certification of Representative issued by the Regional Director for the Sixteenth Region of the National Labor Relations Board in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".
- (3) The collective bargaining agreement which is now in existence between the International Ladies' Garment Workers' Union, AFL-CIO and the successor employer at Kabro, Inc. of Houston, Texas.
- (4) The expired collective bargaining agreement between Bobbie Brooks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO, being the same agreement as is referred to in the Supplemental Decision and Certification of Representative issued by the Regional Director for the Sixteenth Region of the National Labor Relations Board in Case No. 16-RC-3714, a copy of which is attached hereto and identified as Exhibit "A".
- (5) The collective bargaining agreement now in existence between Bobbie Brooks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.

- (6) All written correspondence and memorandums of any nature whatsoever now in the possession of the International Ladies' Garment Workers' Union, AFL-CIO concerning the collective bargaining negotiations between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas in regard to the latest contract between the Nardis Company of Dallas, Texas and the International Ladies' Garment Workers' Union, AFL-CIO.
- (7) The collective bargaining contract now in existence between the Nardis Company of Dallas, Texas and the International Ladies' Garment Workers' Union, AFL-CIO.

LYNE, BLANCHETTE, SMITH & SHELTON

By: _____

Fritz Lyne

By: _____

George C. Dunlap

Attorneys for Respondent

THE STATE OF TEXAS

COUNTY OF DALLAS

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared GEORGE C. DUNLAP, who, after being by me duly sworn, upon his oath stated:

"That Exhibit "A" attached to this Motion is a true and correct copy of the Supplemental Decision and Certification of Representative in Case No. 16-RC-3714, as received by Respondent. That in said Decision the Regional Director relied in part, as can be seen from the reading of such Decision, upon the collective bargaining contract between Amedee Frocks and Laredo Mfg. Co. and the International Ladies' Garment Workers' Union, AFL-CIO, and upon the written instrument encompassing

the agreement between Kabro, Inc. of Houston, Texas and the International Ladies' Garment Workers Union, AFL-CIO, and upon the expired collective bargaining agreement between Bobbie Brooks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO, and upon certain unknown witnesses and/or correspondence concerning the state of negotiations between the International Ladies' Garment Worker's Union, AFL-CIO and various companies.

That the above documents and materials are relevant to this proceeding for the reason that Respondent heretofore in Case No. 16-RC-3714 filed its Objections To Conduct Affecting the Results of Election, such objections being that the International Ladies' Garment Workers Union, AFL-CIO had made material misrepresentations in its campaign literature preceding the representation election of January 26, 1965.

That this Respondent has never been allowed a hearing by the Regional Director nor by the National Labor Relations Board, and, therefore, has never been allowed to come forward with its own evidence on the issue of material misrepresentations by the International Ladies' Garment Workers' Union, AFL-CIO. The above requested documents and other material bear directly upon this issue and are necessary and the best evidence to Respondent in order to prove its allegations."

George C. Dunlap

SUBSCRIBED AND SWORN TO BEFORE ME by the said George C. Dunlap on this the 21st day of May, 1965.

/s/ Carolyn Cole
Notary Public in and for
Dallas County, Texas

(Certificate of Service)

Attached Exhibits A, A-1, A-2, B, C, D and E appear at Joint Appendix pages 44, 36, 37, 40, 41, 42, 43, and 49.

General Counsel's Exhibit 1(1)

APPLICATION TO TAKE ORAL DEPOSITION

TO: THE HONORABLE REGIONAL DIRECTOR,
SIXTEENTH REGION,
NATIONAL LABOR RELATIONS BOARD

Now comes RUSSELL-NEWMAN MANUFACTURING COMPANY, INC., Respondent in the above captioned and numbered cause, and makes this, its application to take the oral deposition of Carlos Gonzales, Laredo Mfg. Co., Laredo, Texas, and for reasons of this application would show the following:

I.

That Carlos Gonzales is an executive with the Laredo Mfg. Co. of Laredo, Texas. That in the Employer's Objections to Conduct Affecting the Results of Election in Case No. 16-RC-3714, the Respondent herein raised the issue of material misrepresentations by the International Ladies' Garment Workers' Union, AFL-CIO concerning certain terms of the contract between the said International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. That in his Supplemental Decision and Certification of Representative in Case No. 16-RC-3714, the Regional Director relied, in part, on certain provisions, terms and conditions in the said collective bargaining contract. The witness Carlos Gonzales has personal knowledge of the terms and conditions of the said collective bargaining contract and is in possession of an executed copy of the same. That the distance and the expense required for Carlos Gonzales to be present at the scheduled hearing in this matter is prohibitive, and therefore, it will be necessary for Respondent to take his oral deposition prior to the date of the hearing in order to have his testimony available to the

Respondent at the hearing, along with a fully identified copy of the above stated collective bargaining contract.

Respondent expects that Carlos Gonzales will testify as to all of the relevant terms, provisions and conditions in said collective bargaining contract, as such terms, provisions and conditions apply to the misrepresentations alleged by Respondent in Case No. 16-RC-3714.

II.

Respondent proposes to take the oral deposition of Carlos Gonzales in Laredo, Texas at the Laredo Mfg. Co. premises on the 28th day of May, 1965, at 2:00 o'clock p.m., before a Notary Public of and for Webb County, Texas, Mr. William J. Moore, Frost National Bank Building, San Antonio, Texas.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: _____
Fritz Lyne

By: _____
George C. Dunlap

4000 First National Bank Bldg.
Dallas, Texas 75202
Riverside 1-4871

Attorneys for Respondent

(Certificate of Service)

General Counsel's Exhibit 1(m)

MOTION TO STRIKE RESPONDENT'S REQUEST FOR ADMISSIONS AND DENY RESPONDENT'S MOTIONS FOR DISCOVERY

Comes now Counsel for the General Counsel and moves that the Request for Admissions filed by Russell-Newman Manufacturing Co., Inc., hereinafter called Respondent, be stricken and that the motions for discovery filed and served upon Elmer Davis and the International Ladies' Garment Workers' Union, AFL-CIO, be denied. In support of these motions, Counsel for the General Counsel avers as follows:

1.

The Rules and Regulations of the National Labor Relations Board, Series 8, as amended, hereinafter called the Board's Rules and Regulations, make no provision for request for admissions, motions for discovery or other forms of discovery procedure and, therefore, such pleadings and motions are improper and should be respectively stricken and denied.

2.

Procedure before the Board is governed by the Administrative Procedures Act and the Board's Rules and Regulations and not by the Federal Rules of Civil Procedure.

3.

The information sought in Respondent's motions for discovery and requests for admissions in each and every instance pertains to Respondent's Objections to the Conduct Affecting the Results of an Election filed in Case No. 16-RC-3714. Those objections have been ruled upon finally by the Board and are irrelevant and immaterial to the issues to be determined in the above entitled case. (See Exhibits 1 and 8 attached to Counsel for the General Counsel's Motion to Strike Portions of Respondent's Answer to Complaint and Motion for Judgment on the Pleadings previously filed in this case which are hereby incorporated by reference and made a part hereof.)

ARGUMENT AND AUTHORITIES IN SUPPORT OF MOTION

Hearings of the National Labor Relations Board are governed not by the Federal Rules of Civil Procedure, but by the Administrative Procedures Act and the Board's Rules and Regulations. *Raser Tanning Co. v. N.L.R.B.*, 276 F. 2d 451, 45 LRRM 3039, 3041 (C. A. 6) cert. denied 363 U. S. 830; Section 10b of the National Labor Relations Act and Section 102.39 of the Board's Rules and Regulations apply only to the Rules of Evidence and not Rules of Procedure. "As to the Request for

Discovery, the Board's procedures make no provision therefor and the like thereof has been held not to be a denial of due process." Walsh-Lumpkin Wholesale Drug Company, 129 NLRB 294; Plumbers' and Steamfitters' Union, Local 100, et al (Beard Plumbing Company) 128 NLRB 398 enfd. 291 F. 2d 927 (C. A. 5); Chambers Manufacturing Corporation, 124 NLRB 721 enfd. 278 F. 2d 715 (C. A. 5); N.L.R.B. v. Vapor Blast Mfg. Company, 287 F. 2d 402, cert. denied 368 U. S. 823 (C. A. 7); N. L. R. B. v. Globe Wireless, Ltd., 193 F. 2d 748, 751 (C. A. 9). See also Honorable Julius H. Minor, et al, v. H. Leslie Atlass, 364 U. S. 854.

Examination of Respondent's requests for admissions and motions for discovery makes it quite obvious that Respondent is attempting to relitigate issues concerning the prior related representation case in this unfair labor practice proceeding. The Board's Rules and Regulations, Section 102.67, Series 8, as amended, provide, in part:

Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

The Board has also taken this position in its decisions. Mountain States Telephone & Telegraph Co., 136 NLRB 1612, enfd. 310 F. 2d 478 (C. A. 10), cert. denied 371 U. S. 875. O. K. Van and Storage, Inc., 127 NLRB 1537. The courts have agreed: NLRB v. Zelrich Company, 59 LRRM 2225 (C. A. 5); NLRB v. Schill Steel Products, Inc., 58 LRRM 2177, 2181 (C. A. 5); NLRB v. Manning, Maxwell & Moore, Incorporated, 324 F. 2d 857, (C. A. 5) enfg. 143 NLRB 5; NLRB v. O. K. Van and Storage, Inc., 297 F. 2d 74, (C. A. 5). Respondent's answer raises no issue not already disposed of in the representation proceeding.

WHEREFORE Counsel for the General Counsel prays that the Trial Examiner strike Respondent's request for admissions and deny Respondent's motions for discovery.

DATED at Fort Worth, Texas, this 26th day of May 1965.

JAMES A. KING, JR.
Counsel for the General Counsel
National Labor Relations Board
Sixteenth Region
Sixth Floor, Meacham Building
110 West Fifth Street
Fort Worth, Texas 76102

(Certificate of Service)

General Counsel's Exhibit 1(n)

ORDER REFERRING MOTION TO TRIAL EXAMINER FOR RULING

On May 21, 1965, Respondent in the above entitled matter, filed with the undersigned a request for admissions.

On May 24, 1965, Respondent in the above entitled matter filed with the undersigned two motions of discovery, one requesting that the Trial Examiner order the International Ladies' Garment Workers' Union, AFL-CIO, to produce and to permit Respondent to inspect and copy certain documents, and the other requesting that the Trial Examiner order Elmer Davis, Regional Director, National Labor Relations Board, Sixteenth Region, to produce and permit Respondent to inspect and copy certain documents.

On May 26, 1965, Counsel for the General Counsel in the above entitled matter filed with the undersigned a Motion to Strike Respondent's Request for Admissions and to Deny Respondent's Motions for Discovery.

IT IS HEREBY ORDERED, pursuant to Section 102.25 of the Board's Rules and Regulations, Series 8, as amended, that said motions be and the same hereby are, referred to the Trial Examiner for a ruling.

DATED at Fort Worth, Texas, this 26th day of May 1965.

Elmer Davis
Regional Director
National Labor Relations Board
Sixteenth Region
Sixth Floor, Meacham Building
110 West Fifth Street
Fort Worth, Texas 76102

General Counsel's Exhibit 1(p)

ORDER DENYING APPLICATION TO TAKE ORAL DEPOSITION

On May 21, 1965, Counsel for Respondent in the above entitled proceedings filed an Application to Take the Oral Deposition of Carlos C. Gonzales, allegedly an executive of Laredo Manufacturing Co. of Laredo, Texas, having personal knowledge of the terms and conditons of a collective bargaining agreement pertaining to Respondent's Objections to the Election in Case No. 16-RC-3714. In support of said application, Respondent contends that the distance involved and the expense required for Gonzales to be present at the scheduled hearing is prohibitive, and urges that said witness' testimony be taken by deposition.

The undersigned having duly considered the matter; and deeming that the expenses to be incurred by Respondent in bringing the witness a distance of approximately 426 miles is not sufficient cause to warrant utilization of deposition procedures, especially since such procedures would entail substantially the same expense for Respondent's Counsel; and in the absence of any valid reason therefor, hereby

ORDERS, pursuant to Section 102.30 of the Board's Rules and Regulations, Series 8, as amended, that Respondent's Application to Take Oral Deposition be, and it hereby is, denied in all respects.

Dated at Fort Worth, Texas, this 27th day of May, 1965.

Elmer Davis, Regional Director
National Labor Relations Board
Region 16
Sixth Floor Meacham Building
Fort Worth, Texas 76102

General Counsel's Exhibit 1(r)

ORDER TO SHOW CAUSE

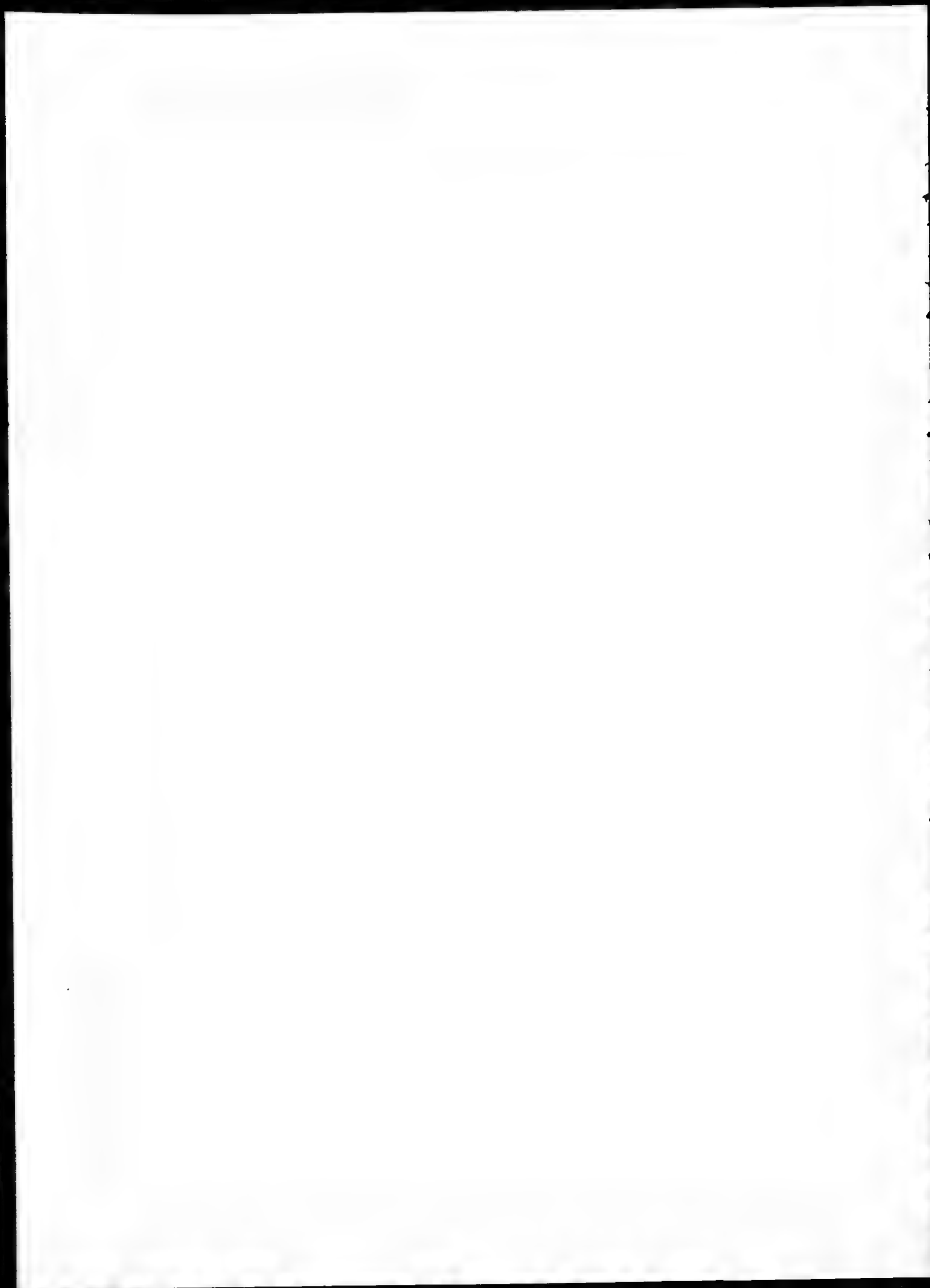
Counsel for the General Counsel having filed a document captioned "Motion to Strike Portions of Respondent's Answer to Complaint and Motion for Judgment on the Pleadings," and said "Motion" having been duly referred to the undersigned Trial Examiner for ruling, upon consideration thereof and of the other pleadings on file herein, it is hereby

ORDERED that on or before Friday, June 4, 1965, Respondent shall file with the undersigned and serve upon the other parties hereto a response to the Motion, showing cause, if any there be, why said Motion should not be granted, and particularly setting forth in said response what facts, if any, it is prepared to adduce, if afforded an opportunity to do so, which are contrary to those set forth in the Regional Director's Supplemental Decision and Certification of Representatives in Case No. 16-RC-3714 insofar as that Decision deals with Exhibits A-2 and C attached to Employer's Objections to Conduct Affecting the Results of Election.

The attention of all parties is hereby directed to the "Opinion Accompanying Order to Show Cause" issued simultaneously herewith.

Frederick U. Reel
Trial Examiner

Dated: May 28, 1965



OPINION ACCOMPANYING ORDER TO SHOW CAUSE

I have this date issued an Order to Show Cause directing Respondent to file a response to the General Counsel's Motion to Strike Portions of Respondent's Answer and for Judgment on the Pleadings. In that Order I directed particular attention to that portion of the litigation concerning Respondent's Objections to Conduct Affecting the Results of Election. Although I shall rule formally upon the Motion after the response is filed, I deem it desirable to indicate to all parties at this time the considerations which impelled me to direct particular attention to that part of the case.

1. In large part I consider General Counsel's Motion to be well taken. More particularly, I see no need to convene an unfair labor practice hearing to relitigate whether the charging union is a labor organization, whether the unit is appropriate, and other matters explored at the hearing in the representation case. Respondent is not entitled to relitigate these matters, unless it can show that it has newly discovered evidence or evidence not theretofore available to it. See, e.g., N.L.R.B. v. Air Control Products, 335 F.2d 245 (C.A.5). It may, of course, obtain judicial review of the determinations made, on the record there made, by preserving its rights by appropriate exception. See Section 9(d) of the Act.

2. By admitting paragraphs 17 and 18 of the Complaint, Respondent has in effect admitted a refusal to bargain with the Union.

3. Respondent's Objections to Conduct Affecting Results of Election have not, however, been the subject of any hearing. Whether such a hearing is necessary or whether the Regional Director's investigation suffices depends upon whether any factual issues are raised requiring resolution. Plainly, this is not a case in which General Counsel can concede the allegations of the Respondent's "Objections" and still prevail. On the contrary, if those allegations are correct, the election could not stand. But the Regional Director found the allegations not sustained. Because he made

his findings following an investigation, rather than after a hearing, neither Respondent nor any reviewing court has before it a "record" on which to determine whether his findings are correct. However, he has stated in some detail the basis for his findings. If Respondent is of the view that the Regional Director's findings, although accurate, are inadequate to sustain his result, no further hearing is needed, as Respondent can argue their inadequacy as a matter of law in any subsequent review. But if Respondent intends to argue that the Regional Director's finding are inaccurate -- i.e., that he has omitted or misstated material matters -- I believe judicial authority requires the Board to afford Respondent an opportunity to make such a showing. For that reason in the Order to Show Cause I invited Respondent to show what factual issues, if any, it intended to raise on this aspect of the case. See in addition to the Air Control case, supra, N.L.R.B. v. Dallas City Packing Co., 230 F. 2d 708 (C. A. 5); N. L. R. B. v. West Texas Utilities Co., 214 F. 2d 732 (C. A. 5); N. L. R. B. v. Tidelands Marine Service, Inc., 339 F. 2d 291 (C. A. 5).

Frederick U. Reel
Trial Examiner

Dated: May 28, 1965.

General Counsel's Exhibit 1(t)

NOTICE OF TAKING DEPOSITIONS ON WRITTEN INTERROGATORIES

TO: THE HONORABLE ELMER DAVIS
REGIONAL DIRECTOR
SIXTEENTH REGION
NATIONAL LABOR RELATIONS BOARD

Please take notice that the attached Interrogatories will be propounded on Respondent's behalf to Mr. John Vickers of the International Ladies' Garment Workers' Union, AFL-CIO, 1000 Main Street, Dallas, Texas, at the taking of his deposition before Mr. John W. Rice, Jr., a Notary Public for Dallas County, Texas, whose address is Kirby Building, Dallas, Texas. .

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: _____
Fritz Lyne

By: _____
George C. Dunlap

Attorneys for Respondent

INTERROGATORIES

TO: MR. JOHN VICKERS
INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, AFL-CIO

- (1) Please state all of the terms, provisions and conditions which in any way, directly or indirectly, concern wages of employees in the present contract between the International Ladies' Garment Workers' Union, AFL-CIO and Amedee Frocks and Laredo Mfg. Co. in Laredo, Texas.
- (2) Please state all of the terms, provisions and conditions which in any way, directly or indirectly, concern wages of employees in the contract reached in April of 1964 between the International Ladies' Garment Workers' Union, AFL-CIO and Kabro, Inc. of Houston, Texas.
- (3) Please state all of the terms, provisions and conditions which in any way, directly or indirectly, concern wages of employees in the present contract between the International Ladies' Garment Workers' Union, AFL-CIO and Bobbie Brooks, Inc.
- (4) Please state fully the history of negotiations between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas as concerns the present union contract with such company, including in such statement the following:

- (a) The initial offer made by the Nardis Company as to increases in wages.

(Certificate of Service)

General Counsel's Exhibit 1(u)

NOTICE OF TAKING DEPOSITIONS ON WRITTEN INTERROGATORIES

**TO: THE HONORABLE ELMER DAVIS
REGIONAL DIRECTOR
SIXTEENTH REGION
NATIONAL LABOR RELATIONS BOARD**

Please take notice that the attached Interrogatories will be propounded on Respondent's behalf to the Honorable Elmer Davis, Regional Director, Sixteenth Region, National Labor Relations Board, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas, at the taking of his deposition before Mr. Vince Myer, a Notary Public of Tarrant County, Texas, whose address is 201 Federal Courthouse, Fort Worth, Texas.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: _____
Fritz Lyne

By: _____
George C. Dunlap

Attorneys for Respondent

INTERROGATORIES

**TO: THE HONORABLE ELMER DAVIS
REGIONAL DIRECTOR
SIXTEENTH REGION
NATIONAL LABOR RELATIONS BOARD**

- (1) Please list all of the collective bargaining contracts which were examined in connection with your Supplemental Decision and Certification of Representative in Case No. 16-RC-3714.

- (2) Please state which of the collective bargaining contracts listed in your answer to Paragraph (1) above were in your files at the time of your receipt of these Interrogatories.
- (3) Please list by name of witness and date of statement all written statements which were taken or provided to you in connection with your Supplemental Decision and Certification of Representative in Case No. 16-RC-3714.
- (4) Please list by name of witness and date of statement all written statements referred to above in Paragraph (3) which were in your files at the time of your receipt of these Interrogatories.
- (5) Please fully describe all memorandums which were in your file on Case No. 16-RC-3714 at the time of your receipt of these Interrogatories.
- (6) Please fully describe all written correspondence which was in your file on Case No. 16-RC-3714 at the time of your receipt of these Interrogatories.
- (7) Please state the names and addresses of all witnesses who were interviewed by you or your agents in connection with your Supplemental Decision and Certification of Representative in Case No. 16-RC-3714.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: _____
Fritz Lyne

By: _____
George C. Dunlap
Attorneys for Respondent

(Certificate of Service)

**MOTION TO STRIKE RESPONDENTS' NOTICES OF TAKING
DEPOSITIONS ON WRITTEN INTERROGATORIES**

Comes now Counsel for the General Counsel and moves that the Notice of Taking Depositions on Written Interrogatories addressed to Elmer Davis, Regional Director, Sixteenth Region, National Labor Relations Board, and the Notice of Taking Depositions on Written Interrogatories addressed to Mr. John Vickers of the International Ladies' Garment Workers' Union, AFL-CIO, filed by Russell-Newman Manufacturing Co., Inc., hereinafter called Respondent, be stricken from the record in this case. In support of this motion, Counsel for the General Counsel avers as follows:

1.

The Rules and Regulations of the National Labor Relations Board, Series 8, as amended, hereinafter called the Board's Rules and Regulations, make no provision for written interrogatories or other forms of discovery procedure and, therefore, such pleadings and motions are improper and should be stricken.

2.

Procedure before the Board is governed by the Administrative Procedures Act and the Board's Rules and Regulations and not by the Federal Rules of Civil Procedure.

3.

The information sought in Respondent's written interrogatories pertains to Respondent's Objections to the Conduct Affecting the Results of an Election filed in Case No. 16-RC-3714. Those objections have been ruled upon finally by the Board and are irrelevant and immaterial to the issues to be determined in the above entitled case. (See Exhibits 1 through 8 attached to Counsel for the General Counsel's Motion to Strike Portions of Respondent's Answer to Complaint and Motion for Judgment on the Pleadings previously filed in this case which are hereby incorporated by reference and made a part hereof and the admissions contained in Respondent's Answer heretofore filed in this case.)

ARGUMENT AND AUTHORITIES IN SUPPORT OF MOTION

Hearings of the National Labor Relations Board are governed not by the Federal Rules of Civil Procedure, but by the Administrative Procedures Act and the Board's Rules and Regulations. Raser Tanning Co. v. N.L.R.B., 276 F. 2d 451, 45 LRRM 3039, 3041 (C. A. 6) cert. denied 363 U. S. 830; Section 10b of the National Labor Relations Act and Section 102.39 of the Board's Rules and Regulations apply only to the Rules of Evidence and not Rules of Procedure. "As to the request for discovery, the Board's procedures make no provision therefor and the lack thereof has been held not to be a denial of due process." Walsh-Lumpkin Wholesale Drug Company, 129 NLRB 294, 296; Plumbers' and Steamfitters' Union, Local 100, et al (Beard Plumbing Company) 128 NLRB 398 enfd. 291 F.2d 927 (C. A. 5); Chambers Manufacturing Corporation, 124 NLRB 721 enfd. 278 F. 2d 715 (C. A. 5); N.L.R.B. v. Vapor Blast Mfg. Company, 287 F. 2d 402, cert. denied 368 U. S. 823 (C. A. 7); N.L.R.B. v. Globe Wireless, Ltd., 193 F. 2d 748, 751 (C. A. 9). See also Honorable Julius H. Minor, et al, v. H. Leslie Atlass, 364 U. S. 854.

Examination of Respondent's requests for admissions and motions for discovery makes it quite obvious that Respondent is attempting to relitigate issues concerning the prior related representation case in this unfair labor practice proceedings. The Board's Rules and Regulations, Section 102.67, Series 8, as amended, provide, in part:

Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

The Board has also taken this position in its decisions. Mountain States Telephone & Telegraph Co., 136 NLRB 1612, enfd. 310 F. 2d 478 (C. A. 10), cert. denied 371 U. S. 875. O.K. Van and Storage, Inc., 127 NLRB 1537.

The courts have agreed: NLRB v. Zelrich Company, 59 LRRM 2225 (C. A. 5); NLRB v. Schill Steel Products, Inc., 58 LRRM 2177, 2181 (C. A. 5); NLRB v. Manning, Maxwell & Moore, Incorporated, 324 F. 2d 857, (C. A. 5) enfg. 143 NLRB 5; NLRB v. O. K. Van and Storage, Inc., 297 F. 2d 74, (C. A. 5). Respondent's answer raises no issue not already disposed of in the representation proceeding.

WHEREFORE Counsel for the General Counsel prays that the Trial Examiner strike Respondent's request for admissions and deny Respondent's Motions for Discovery.

DATED at Fort Worth, Texas, this 1st day of June 1965.

(Certificate of Service)

James A. King, Jr.
Counsel for the General Counsel
National Labor Relations Board
Sixteenth Region
Fort Worth, Texas 76102

General Counsel's Exhibit 1(w)

ORDER REFERRING MOTION TO TRIAL EXAMINER FOR RULING

On May 27, 1965, Respondent in the above entitled matter, filed with the undersigned a Notice of Taking Depositions on Written Interrogatories addressed to Elmer Davis, Regional Director, Sixteenth Region, National Labor Relations Board and a Notice of Taking Depositions on Written Interrogatories addressed to John Vickers of the International Ladies' Garment Workers' Union, AFL-CIO.

On June 1, 1965, Counsel for the General Counsel in the above entitled matter filed with the undersigned a Motion to Strike Respondents' Notices of Taking Depositions on Written Interrogatories.

IT IS HEREBY ORDERED, pursuant to Section 102.25 of the Board's Rules and Regulations, Series 8, as amended, that said pleading and motion be, and the same hereby are, referred to the Trial Examiner for ruling.

DATED at Fort Worth, Texas, this 1st day of June 1965.

Elmer Davis
Regional Director
National Labor Relations Board
Sixteenth Region
Fort Worth, Texas 76102

General Counsel's Exhibit 1(z)

RESPONSE TO REQUEST FOR ADMISSIONS

NOW COMES the International Ladies' Garment Workers' Union, AFL-CIO, and in response to the "Request for Admissions" previously served upon it replies as follows:

1.

Charging Party objects to the request for admissions as they are not contemplated by the rules and regulations of the National Labor Relations Board and hence do not require response.

2.

Charging Party objects to the request for admissions for the further reason that they seek to inquire about matters not relevant or material to the issues in the instant proceeding.

WHEREFORE, PREMISES CONSIDERED, Charging Party prays that the request for admissions heretofore filed by Respondent be stricken.

Respectfully submitted,

MULLINAX, WELLS, MORRIS & MAUZY
1601 National Bankers Life Building
Dallas, Texas 75201

By

David R. Richards

(Certificate of Service)

General Counsel's Exhibit 1(aa)

MOTION FOR AN ORDER PROVIDING SPECIFIC RELIEF

Now comes the International Ladies' Garment Workers' Union, AFL-CIO, the charging party herein, and moves the Trial Examiner to include in his Recommended Order, at such time as it issues, certain specific relief and in support thereof the charging party shows:

1.

Attached and made a part hereof is a letter from the union to respondent of May 17, 1965, (Ex. A) and respondent's reply of May 19, 1965 (Ex. B). As alleged in its letter of May 17, 1965, the union believes that respondent is arbitrarily manipulating the production figures of the employees in respondent's Denton plant, and the union has requested the right to inspect these computations, by its letter of May 19, 1965, respondent denied the union's request for inspection.

2.

Attached and made a part hereof, is an Intermediate Report and Recommended Order issued in Case Nos. 16-CA-2116, and 16-CA-2138 (Ex. C), certain portions of which the union requests the Examiner to take judicial knowledge, to-wit: (1) That immediately following the representation election at respondent's Denton Plant January 26, 1965, respondent, without explanation to the union or to the employees, posted, or caused to be posted, "For Sale" signs on its main Denton sewing plant; (2) that respondent granted to its employees at its unorganized Pilot Point plant a general wage increase two days after the representation election in Denton, and one of the alleged bases for the wage increase was the efficiency demonstrated by the "production records" maintained on the respondent's Pilot Point plant.

3.

Attached and made a part hereof, is correspondence passing between the union and respondent since the representation election, and identified as follows:

1. Union's letter of March 5, 1965 (Ex. D).
2. Employer's letter of March 10, 1965 (Ex. E).
3. Union's letter of March 23, 1965 (Ex. F).
4. Union's letter of March 29, 1965 (Ex. G).
5. Employer's letter of April 1, 1965 (Ex. H).
6. Employer's letter of April 12, 1965 (Ex. I).
7. Union's letter of April 12, 1965 (Ex. J).

4.

On the basis of the foregoing undisputed matters and the established reluctance of respondent to meet its collective bargaining obligation, the union asserts that certain specific relief should be included in any Recommended Order to serve the purposes of the Act and to enable the union to fulfill its responsibility of intelligent and reasonable representation.

WHEREFORE, PREMISES CONSIDERED, the charging party requests that any Order issued herein, at such time as it issues, include the following specific items of relief:

1. That the respondent shall neither sell nor permit to be sold the building housing its main sewing plant without prior notice to the union and a reasonable opportunity afforded to the union to consult and negotiate concerning the decision to sell, and the effect of such prospective sale upon bargaining unit employees;
2. The respondent shall not transfer, permanently or otherwise, production equipment from its Denton, Texas, sewing operation to its unorganized plants without prior notice to the union and an opportunity afforded to the union to negotiate concerning the decision to make such transfer and the effect of such prospective transfer upon the bargaining unit employees;

3. The respondent shall not transfer, permanently or otherwise, lines of production from its Denton plant to its unorganized plants without prior notice to the union and an opportunity afforded to the union to negotiate concerning the decision to make such transfer and the effect of such prospective transfer upon the bargaining unit employees;
4. The respondent will produce for inspection by the union the production records as they relate to respondent's Denton, Texas, plant and its Pilot Point plant;
5. Respondent will produce for inspection by the union, its records relating to the rates of pay, hours of employment and seniority dates of employees within the Denton bargaining unit;
6. Respondent will not make any change in operation that may adversely effect, either presently or in the future, the bargaining unit employees without prior notice to the union and an opportunity afforded to the union to negotiate concerning the decision to make such change and the effect of such prospective change upon the bargaining unit employees;
7. Respondent will restore to the bargaining unit any production work or production equipment that it has transferred from the bargaining unit since January 26, 1965.

Respectfully submitted,

MULLINAX, WELLS, MORRIS & MAUZY
1601 National Bankers Life Building
Dallas, Texas 75201
RI 1-4656

By _____

David R. Richards
Attorneys for Charging Party

AFFIDAVIT

I, David R. Richards, attorney for the charging party herein, have personal knowledge of the authenticity of the correspondence appended as exhibits, and hereby affirm that each attached letter is a true and correct copy of correspondence passing between the parties on the dates indicated, and to the best of my knowledge there is no other correspondence passing between the parties since the election relating to bargaining requests.

David R. Richards

SUBSCRIBED AND SWORN TO before me, the undersigned authority on this the 28th day of May, 1965.

/s/ Suzanne Kirkpatrick

Notary Public in and for
Dallas County, Texas

(Certificate of Service)

Exhibit "A"

May 17, 1965

Russell-Newman Manufacturing Company
Denton Plant
Denton, Texas

Attention: Mr. Frank Martino

Dear Mr. Martino:

This letter is written on behalf of the International Ladies Garment Workers Union, AFL-CIO. In keeping with our earlier correspondence this letter constitutes a renewed request for bargaining regarding wages, hours, terms and conditions for employment of the employees in your company's Denton, Texas, operations.

Additionally, this letter is written to protest the recurring movement of both equipment, machines, and production work from Denton

to your company's other plants. This continued transfer of work, and potential work, is adversely affecting and will adversely affect in the future the employees in the Denton bargaining unit. The union would like the opportunity to discuss with your representatives this transfer of equipment and production work and the possible effect this may have on the employees in the bargaining unit.

Further, this letter is to request the opportunity to inspect the production records maintained on the Denton, Texas, operation. In the past your company has indicated a reliance upon these records in determining wage increases and other terms and conditions of employment. For this reason and for the further reason that there is present indication of an attempt by your company to deflate the production figures for the Denton employees and inflate the production records for your other plants, thereby putting the Denton plant in an unfavorable comparative position to the other plants.

In order to ascertain the true productive efficiency of the Denton, Texas, plant and in order to determine the accuracy of the charges that these production figures are being manipulated the union would like the opportunity to inspect these production records at some convenient time and place.

In this connection we wish to protest the new practice in Denton of frequent movement of operators from one machine to another and from one assignment to another. This practice varies substantially from the past and of course, has an adverse effect upon the individual's production output. In the event you contemplate relying upon current production figures in determining future wages, hours, or other terms or conditions of employment please be advised that the union feels that they are presently being arbitrarily depressed in Denton.

We would appreciate your taking into consideration these requests as we feel that they are warranted both by the union's obligation as collective bargaining representative and further by the complaints of the employees represented by the union.

We look forward to an early reply.

Sincerely,

MULLINAX, WELLS, MORRIS & MAUZY

By: David R. Richards
Attorneys for International
Ladies Garment Workers Union,
AFL-CIO

DRR/sk
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Exhibit "B"

LYNE, BLANCHETTE, SMITH & SHELTON
Attorneys at Law
Dallas, Texas

May 19, 1965

Mr. David R. Richards
Attorney at Law
1601 National Bankers Life Bldg.
Dallas, Texas

Re: Russell-Newman Manufacturing Co., Inc.
and International Ladies' Garment Workers,
AFL-CIO
Case No. 16-RC-3714

Dear Mr. Richards:

Your letter to Mr. Frank Martino of Russell-Newman Manufacturing Co., Inc. dated May 17, 1965, has been referred to us for answer. In your letter of May 17, 1965 you make certain "protests" and also certain requests concerning inspection of our production records.

You are well aware of our position and the position of our client on this matter. We are well aware that the reason for these continued letters setting out demands and requests is simply to manufacture evidence for later hearings which may be held. However, I will reiterate once again that our position is and remains as was set out to you in my April 12, 1965 letter.

Therefore, your requests and protests as set out in your May 17, 1965 letter are rejected.

Kindest personal regards.

Yours very truly,

GEORGE C. DUNLAP

Exhibit "C"

TRIAL EXAMINER'S DECISION

Statement of the Case

This case was tried in Denton, Texas, on February 8, 1965. The Respondent, Russell-Newman Mfg. Co., Inc., is a manufacturer of women's garments. Two plants are involved, one at Denton and the second at Pilot Point, about 18 miles distant. By appropriate order in a representation proceeding it was determined that each plant constituted an appropriate unit. In an election held January 26, 1965, the Union became the bargaining representative of the employees, at the Denton plant, by a vote of 180 to 75.

At all times material to the issues in this case the Union was engaged in organizational activity at the Pilot Point plant, and was so engaged at the time of the hearing. No demand had been made for bargaining by the Union at Pilot Point, at the time of the hearing. Respondent acknowledges however that it had full knowledge of the organizational effort at Pilot Point.

In case numbered 2116 the original charge was filed August 28, and in case numbered 2138, September 22, 1964. A first amended charge was filed in the first numbered case on October 23, and a first amended charge was also filed in the second case on February 4, 1965. The last mentioned charge was filed just 4 days before the hearing and telegraphic notice of the charge, and of an amendment to the complaint, was given by counsel for the General Counsel to other parties on the day the amended charge was filed.

The case involves three allegations of violation of Section 8(a)(1) of the Act, i.e., (1) that Respondent's Supervisor Kenneth Griffith threatened employees at the Pilot Point plant with discharge because of union activity; (2) that Respondent's officer Frank Martino "warned" its Denton plant employees would be "laid off" if they selected the Union as their bargaining representative at the coming election ("warned" is here interpreted to mean "unlawful threat of reprisal") and (3) that Opal Made-well, a supervisor, interrogated Denton plant employees unlawfully concerning their union activities.

The case also involves two other issues: (4) that Respondent granted a wage increase and other benefits at Pilot Point as an inducement to the employees to refrain from joining or assisting the Union; and (5) threatened to sell its Denton plant because the employees there had selected the Union as their representative, and to discourage the employees from remaining or becoming members of the Union.

Briefs were filed on behalf of the General Counsel and the Respondent. Upon the entire record in the case, the briefs, and my observation of the demeanor of the witnesses on the witness stand, it is recommended for the reasons hereinafter set forth that the complaint be dismissed.

Findings of Fact and Conclusions of Law

I find as facts the allegations of the complaint as to the nature and volume of business done by the Respondent, which are admitted by the answer, and conclude that, within the meaning of the Act, Respondent is an employer engaged in commerce; and also find and conclude that the Union named in the caption is a labor organization, a matter also admitted in Respondent's answer.

The Alleged Threats by Kenneth Griffith

Thelma Bruce is a sewing machine operator at Respondent's Pilot Point plant, and was known by Respondent to be a member of the Union's organization committee. The only evidence offered in support of the

allegation that Kenneth Griffith threatened to discharge employees at Pilot Point is the testimony of Thelma Bruce. Griffith is manager of the plant.

Mrs. Bruce became distraught when she was not called to the telephone as her son telephoned to the plant, to advise Mrs. Bruce of a grandchild's illness. Through another member of the Union committee Mrs. Bruce sent word that she wanted to see Mr. Griffith. He received the message on the day following the telephone call and went to see Mrs. Bruce promptly.

When asked, on her direct examination, whether any one of management ever spoke to her about the Union Mrs. Bruce responded "just one time, Mr. Griffith." She then related that when Mr. Griffith came, in response to her request she first discussed with him the telephone call concerning her grandchild's tonsillectomy. Mr. Griffith explained to Mrs. Bruce that employees could be called to the telephone only in case of emergency and that when she asked what an emergency was he replied "sickness." Then she testified "I asked him what was that but sickness and he mentioned the Union." To the question "what did he say to you?" she testified, "He said you are for every Union and work for it if you are for it, but for me I am against it and I will work against it.... Then he said that he could get rough if he had to, but he liked us girls and he wanted to keep us working after this, but he did not know."

On cross-examination this witness testified concerning her conversation with Griffith "He told me everybody could not go to the phone and then he talked to me about the Union, I do not remember just how that came up." She reiterated however on cross-examination that Mr. Griffith brought up the subject. She testified "I cannot remember the exact words that he said, but he brought it up about the Union." She also repeated on cross-examination essentially what she said Mr. Griffith had said about "getting rough" and added concerning his attitude about the Union "he was against it and he would work against it."

Mr. Griffith was called by Respondent to testify concerning this conversation. After relating the circumstances of a girl bringing the message that Mrs. Bruce wanted to see him, he said he went to talk to her. He testified: "She started in and said that it was about her grand-baby and that since she was a union organizer that we would not let her talk on the phone. I told her, I said, Thelma, this is not true." Griffith denied categorically that he brought up the subject of the Union and said that she first mentioned it. He also denied that he made any such statement that he "could get rough" at the time attributed to him by Mrs. Bruce and added "I did not make a statement like this in my life." There is no other evidence whatsoever in the entire record bearing directly on this allegation of the complaint.

The witness Kenneth Griffith was straightforward and convincing in his testimony. I accept his version of the conversation with Mrs. Bruce and therefore find and conclude that he did not say he "could get rough with the girls" and that he did not threaten them in any other manner on account of their union activity or on any account whatsoever.

I resolve this credibility problem not on the basis that Mrs. Bruce deliberately gave false testimony but rather on her uncertain recollection as to what was said in their conversation, and the strong probability that Mrs. Bruce, having sent for Griffith, and relating the cause of her grievance to her union connection quite naturally initiated the subject of the Union. Furthermore she was still excited over the failure to get the telephone call concerning her grandchild's illness, and was not in a reflective mood that would have induced recollection of what she did say. There is little question but that she believed the telephone conversation had not been relayed to her because of her union connection. In these circumstances she undoubtedly was the one who initiated discussion of the Union. It is not unlikely that something was said which settled in her mind as the thought she gave expression to when she testified that Mr. Griffith told her that he "could get rough" with the girls. But the record evidence does not

justify a finding that he made such statement. In making this resolution I give weight to the circumstance that Griffith went to Mrs. Bruce not of his own volition but because she sent for him.

**The Alleged Threat of Martino to
Lay Off Employees**

The allegation is that "on or about May 29, 1964", Martino warned the employees at the Denton plant "that if the Union were selected by its employees as their collective bargaining representative" Respondent would lay them off. The allegation of this violation involves a speech by Frank Martino, vice president of Respondent. The speech was recorded by a tape recorder. Counsel for the General Counsel had subpoenaed the speech and had not heard it at the time of the hearing. At the hearing, the tape was heard by all parties, in recess, and thereafter was offered by counsel for the General Counsel and admitted in evidence.

It is very difficult to find which parts, if any, of the speech go beyond the limits of an employer's right to resist unionization of his plant. Since, as it seems, no part violates the right of free speech, it would be difficult to find that the sum of all of its parts constitutes threats or promises to the employees, or is coercive respecting their rights to support or not support the Union.

These excerpts fairly characterize the speech: "With the Union you surrender your rights to discuss your problems with us...outside influence cannot obtain more than the Company in the past has willingly done. A Union would create a division of employees here....

"There are three things a union can do: 1. It can charge you dues.... 2. They can call you out on strike.... 3. They can talk to the Company about your problems but you can do that yourselves now and it doesn't cost you \$4 a month.

"Now, some of the things that the Union cannot do; it cannot pay the employees wages or benefits; only the Company can do this....

2. The Union cannot promise or assure you of anything. They only negotiate for you... In closing, I would like to remind you that you do not have to vote for the Union just because you signed a card.... Texas has a right to work law which means you do not have to belong to the Union and pay dues just because someone else does...."

Counsel for the General Counsel argues in the brief, citing *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782 and other cases, that the employer has by the speech impressed upon its employees the danger and futility of selecting the union as their bargaining representative, and thereby has interfered with the employee's Section 7 rights. But the only parts of the speech counsel cites in the brief are these two paragraphs, stressing Respondent's accomplishments for its employees.

4. Continuous work all year and at many times at great expense to the company. We have just been through one of these periods when you were making a lot of tailored pajamas in some odd ball colors that you probably hadn't seen in years and years and some 15 denier sets. These were cut so that you would have something to do. As I understand, union plants generally shut down as soon as the work runs out.

5. We have built a strong company where one does not worry about a paycheck being cashed. This is in light of the fact that we operate differently from most lingerie manufacturers. Before we ever receive an order from an independent customer, we buy hundreds of thousands of dollars of piece goods and trims so that we can keep you working. This is all done before the customer sees a sample. Would you risk this if there was an uncertain relationship between you and I.

The only evidence of a written communication from management to the employees during the organization period is an exhibit offered by the General Counsel consisting of a form letter from Respondent to all or substantially all of its employees. While it is not alleged in the complaint

that this letter contains either threats or coercive material, and no direct reliance is made on it by the General Counsel, reference has been made to it as background material in the inquiry as to whether the speech discussed contained threats. There is nothing in the letter that supplies new meaning to the language of the speech or that is threatening or coercive in itself. The only other material in the record relating to communications between the Respondent and its employees are references in the Union's campaign literature, to questions and answers posted by Respondent on its bulletin boards during the campaign period. The Union carried on an extensive campaign, as evidenced by the pieces of campaign literature introduced by the Respondent as its exhibits numbered 4 through 44. Several of these exhibits make reference to the Respondent's questions and answers placed on the bulletin boards and in each such instance the Union literature sought to give the correct or true answers to the questions posed by Respondent. No reliance was made on these questions and answers as support for the General Counsel's case with respect to Mr. Martino's alleged threats to lay off the employees. The Union sought in its voluminous campaign material to reply to everything the employer said.

I find and conclude that neither Mr. Martino nor any other agent or representative of Respondent warned or threatened the employees that they would be laid off if they selected the Union as their bargaining representative in the election; also that there were no threats or coercive statements made to encourage the employees not to remain or become members of the Union.

Opal Madewell's Alleged Interrogatories

Proof of this allegation of the complaint consists entirely of the testimony of the witness Betty Stanford. She testified that Opal Madewell, admittedly in supervisory status for Respondent, spoke to her on the day that Mr. Martino made a speech to the employees. When asked what Madewell said to the witness on this occasion the witness testified "Well, she asked me what I thought. We had just got two new tackers in behind

me, they had just been there a few days and I thought she wanted to talk about the tackers so, I walked over to the table and she said something else. I do not remember now the exact conversation. Any way she asked me what I thought about the Union." Counsel for the General Counsel suggesting by his question that her testimony was a bit vague and inconsistent, then asked "Now, you said you do not remember what she said, then you said she asked you about the Union. Do you remember her asking you about the Union?" The witness answered "Yes, I do." Then she testified, "Well, we discussed if employees could strike -- employees on the line -- but we discussed about who had been threatened and I said no, I did not know who had been threatened and she said she thought it may have been me."

The reference to "who had been threatened" related to a statement presumed to have been made by Mr. Martino concerning threats made to employees by union representatives, and his advice to the employees that "if anyone had been threatened to tell the supervisor or Bill Hardy or himself." There is no evidence concerning any such statement by Mr. Martino excepting this indirect reference to it by the witness Betty Stanford. Her testimony is vague, uncertain and confusing. She was at a total loss as to even an approximation of the date of the conversation with Madewell, when the alleged unlawful questioning concerning the Union is supposed to have taken place. Great latitude was given counsel for the General Counsel in his effort to get this witness to fix the date. Even so the record is cloudy as to when the conversation took place. Such uncertainty casts doubt on the accuracy of all she said; and uncertainty characterizes all of her testimony.

I find and conclude that there is nothing in the record to support the allegation that Opal Madewell interrogated Respondent's employees unlawfully. I further find and conclude that the testimony of the witness Stanford is so vague and uncertain that it will not support any substantial finding of fact.

The Wage Increase

Two days after the election at the Denton plant which the Union won, Respondent gave a general 5-cent per hour increase to most if not all of the employees at Pilot Point. As stated, this wage increase became an issue in the complaint by an amendment made on the day of the hearing and of which notice had been given to the parties by counsel for the General Counsel 4 days previously, counting the weekend. The precise allegation is that "Respondent granted to its employees at its Pilot Point plant a general wage increase and other benefits or improvements and terms and conditions of employment if they refrained from becoming or remaining members of the Union or giving any assistance or support to it, or in order to induce them to do so." Literally the pleading seems first to allege that the increase was made conditional on the employees refraining from supporting the Union. This could hardly have been the intention, and in any event there is no evidence whatsoever to support any such interpretation of the allegation. The case proceeded, in this respect, on the theory that the wage increase interfered with the employees' rights to join and support the Union and induced them to refrain from so doing.

The evidence offered consists entirely of testimony of the vice president of Respondent, Frank N. Martino, who was first called as an adverse witness by the counsel for the General Counsel and who testified later as Respondent's witness. There is nothing to refute directly his testimony except the inferences that might be drawn from the fact of the election, the fact of the existence of an organizational campaign by the Union at the Pilot Point plant, and the timing of the wage increase.

Martino testified that the Board of Directors first gave consideration to the granting of this wage increase when plans were being made to celebrate the anniversary year of the Company, that is, 1964. He said further that if it had not been for the intervention of the Union organizational campaign at both Denton and Pilot Point, and the direction of the

election at Denton, the wage increase would have been given during the anniversary year in June or July 1964; that it was not given sooner on advice of counsel for the reason that it would be interpreted, if given sooner, as an unlawful interference with the free expression of the employees choice in the Denton election.

Mr. Martino testified at considerable length concerning a formula used in the trade to determine the operating efficiency of a garment manufacturer's plant. He then read into the record the efficiency rating of the Pilot Point plant under this formula. The record reveals by indirection only that the witness and the management of Respondent Company considered the plant's efficiency ratings as thus stated in the testimony, to be a justification for the increase at Pilot Point. The witness also testified that the increase was in keeping with increases being generally given by industry, and in line with this trend, the increase would have been given sooner had it not been for the representation election at the Denton plant; also that the earlier payment, had "we been allowed" would have just been in keeping with "what we had done in the past." The witness connected the disputed increase to general increases within the industry as they were dealt with in a trade association publication, the "AAMA Index." This testimony concerning plant efficiency and industry increases including the trade association index, is credited as furnishing justification for the wage increase granted at Pilot Point. While it is clear, however, that the witness was able to relate efficiency and the wage index to the disputed wage increase in his own mind, his testimony does not make clear just how these two factors bore on the decision to pay the increased wages.

Respondent's Exhibit No. 44 reveals a consistent pattern of wage increases at Pilot Point beginning in the year 1959 and running through 1965. With the exception of one year, 1961, when a greater increase

was given because of minimum wage law, each of the increases was in the amount of 5 cents, the same amount granted in the increase in dispute. While the pattern of increases does not show great consistency as to the time of year in which the increase was granted, the record fairly reveals that the increase given 2 days after the election was sufficiently in keeping with past practice as not to be deemed a device to impinge on the employees' rights under the Act.

I find and conclude that the Respondent was justified in granting the wage increase and that it did not unlawfully interfere with the rights of the employees under the Act. I see no reason to discredit the testimony of the witness Martino as he related the reasons for the increase, and I give full credence to such testimony.

There is no evidence whatever that Respondent "granted...other benefits or improvements and terms and conditions of employment" as alleged.

The "For Sale" Signs

The second issue injected late into the case, in addition to the wage increase, relates to the placing of "For Sale" signs on one of Respondent's buildings at the Denton plant after the election. The issue is raised by this allegation of the amended complaint filed on the day of the hearing: "On or about February 1, 1965, Respondent threatened to sell its Denton plant because its employees [there] had selected the Union as their collective-bargaining representative and in order to discourage its employees from becoming or remaining members of the Union or giving any assistance or support to it."

The only evidence produced by the General Counsel to support this allegation is the testimony of the witness Frank N. Martino called by counsel for the General Counsel as an adverse witness under Rule 43(b). The testimony of this witness (all of which is credited, because there is nothing to refute it and also because the witness testified in a forthright and convincing manner) establishes that the decision to sell the building

on which the "For Sale" sign was placed, was made about 5 years previously; that there was no intention whatever to sell any part of the manufacturing operation, only the building, and no evidence that anyone believed the plant was being sold; that the last previous effort to sell was in July of 1964 through private negotiations with the First State Bank and that previously there had been other efforts.

When this same witness was called by Respondent in the defense of this issue, he testified that the Respondent has taken an option on land at a stated location at Denton for the purpose of expansion of the plant; that the building offered for sale, about 30 years old, actually is not owned by Respondent but by a separate corporation, The Newman Realty Company, Inc.; that in the arrangement under which the old building was offered for sale, Respondent took steps to protect its operation through a stipulation in the sales contract permitting the Company to rent the building for a period of 1 year at a price of \$1,500 per month; that the "For Sale" sign was posted at the Denton plant January 31, 1964; that on that date one sign 2 by 3 feet was placed; that there were three such signs posted as of the date of the hearing, the two extra ones being placed 3 or 4 days after the first.

The General Counsel's case with respect to this issue depends on the proposition that the natural inference to be drawn from the "For Sale" sign is that the business rather than the building was being offered. There is no direct evidence to support such proposition.

The only other evidence that throws any light on the problem appears in the testimony of the witness Thelma Bruce and, if it bears at all on the natural inference, it detracts from the General Counsel's case. Her testimony related almost entirely to another aspect of the case, -- that of the alleged threats of plant manager, Kenneth Griffith to discharge employees at Pilot Point. Counsel for the General Counsel ventured into the issue of the alleged threat to sell the business, with this witness, by first establishing that she had heard the testimony concerning the "For Sale" sign.

He then asked her this question: "Prior to this hearing, had you heard anything about that "For Sale" sign?" The witness answered "just that a girl told me that the building was for sale and that is all I know about it." Counsel for the General Counsel pursued this subject no longer with this witness, and called no other witnesses to testify on the subject of the "For Sale" signs.

The allegation of the complaint on this issue is broad enough to admit evidence of unlawful interference and coercion with respect to all of Respondent's employees -- those working at the Denton plant and also the plant at Pilot Point. At the plant where the building being offered for sale was situated, Denton, the Union had just won an election. The coercive effect of a "For Sale" sign on one building in a plant consisting of several buildings, with no evidence of any kind of any rumor, belief or understanding that the business would be sold, is negligible if not completely nonexistent. There is nothing whatever in the record to indicate that the employees at the other plant, Pilot Point, had any knowledge that the building was being offered for sale.

I find and conclude that Respondent's employees were not restrained or coerced or their rights interfered with in any way by the "For Sale" signs.

Respondent's Offer of Proof and Motion to Reopen Hearing

Counsel for Respondent objected strenuously to proceeding to hearing on the allegations of the amended complaint, filed on the day of the hearing, respecting the wage increase and the placing of "For Sale" signs on the building at the Denton plant. The ground for his motion for continuance, as the hearing opened, was that Respondent had been denied due process in being called upon to defend allegations with scarcely any notice, or time to prepare its defense. After full consultation between the Trial Examiner and all counsel, the motion for postponement was denied. As a result however of the discussion it was agreed that Respondent should submit as an "Offer of Proof" the evidence that it would introduce

on these two issues if, as counsel contended, time had permitted proper preparation of the defense. The record was held open for this purpose only.

Pursuant to such understanding, and after the hearing closed, Respondent submitted to the parties and to the Trial Examiner a comprehensive offer, culminating in a motion to reopen the hearing to enable Respondent to introduce the evidence set forth in the offer of proof. The opposition of both counsel for the General Counsel and the Charging Party were also received and, together with the offer of proof, were duly considered. The offer of proof and motion to reopen the hearing were, by separate order, denied, and the offer and the papers in opposition were made part of the record as Trial Examiner's exhibits. While Respondent reasserts in the brief that it is a denial of due process to refuse to grant the motion for continuance on the issues raised by the amended charge and complaint, and to reject the offer of proof and to refuse to reopen the hearing as to such issues, Respondent suffers no prejudice from such rulings, even if erroneous, in view of the recommended dismissal of the Complaint in its entirety; and in the main, the proffered evidence was cumulative to that admitted.

For all the reasons hereinbefore set forth it is recommended that the complaint be dismissed.

Dated at Washington, D. C. April 22, 1965

Boyd Leedom
Trial Examiner

Exhibits D, E, F, G, H, and I were printed at J.A. pages 183, 184, 185, 187, 188 and 189.

Exhibit "J"

April 12, 1965

Mr. Fritz L. Lyne
Lyne, Blanchette, Smith & Shelton
Attorneys at Law
40th Floor First National Bank Building
Dallas, Texas 75202

Re: Russell-Newman Manufacturing Co., Inc.

Dear Mr. Lyne:

On March 29, 1965, on behalf of the International Ladies Garment Workers Union, I wrote your client Frank Martino requesting that we set up an early negotiation meeting. In response to my letter I received from Mr. Dunlap, of your office, on April 2d, a letter indicating that you were in trial and that as soon as the trial was completed you would reply to our request for a negotiation meeting. Ten days have passed and I have assumed that this is sufficient time to enable you and your client to acknowledge our request for a negotiation meeting.

As suggested in our letter of March 29th we are anxious to get the preliminaries behind us and would like to meet as promptly as possible concerning negotiations for a collective bargaining contract and to discuss what we understand to be certain changes in operations in the Denton Plant that have been taken without notice or consultation with the union. Again, this letter is to notify you and your client that the union objects to any changes in operations that may affect the bargaining unit and the employees therein.

We would appreciate your early response.

Sincerely,

MULLINAX, WELLS, MORRIS & MAUZY

By: David R. Richards

**ORDER REFERRING MOTION TO TRIAL EXAMINER
FOR RULING**

On May 28, 1965, Counsel for the Charging Party in the above entitled matter filed with the undersigned his Motion for an Order Providing Specific Relief.

IT IS HEREBY ORDERED, pursuant to Section 102.25 of the Board's Rules and Regulations, Series 8, as amended, that said Motion for an Order Providing Specific Relief is hereby referred to the Trial Examiner for Ruling.

DATED at Fort Worth, Texas, this 2nd day of June, 1965.

Elmer Davis, Regional Director
National Labor Relations Board
Sixteenth Region
Sixth Floor, Meacham Building
110 West Fifth
Fort Worth, Texas

RESPONDENT'S OFFER OF PROOF

TO THE HONORABLE TRIAL EXAMINER:

Now comes RUSSELL-NEWMAN MANUFACTURING COMPANY, INC., Respondent in the above captioned and numbered cause, and, in response to the Show Cause Order heretofore issued by the Trial Examiner in the above captioned and numbered cause, ordering said Respondent to show cause why the said Trial Examiner should not grant the General Counsel's Motion For Judgment On The Pleadings herein, makes the following Offer of Proof to the said Trial Examiner:

I.

In his Show Cause Order herein, the Trial Examiner has asked for Respondent to show the evidence which Respondent would present at an unfair labor practice hearing concerning the misrepresentations as are alleged in Employer's Objections To Conduct Affecting The Results Of Election heretofore filed in Case No. 16-RC-3714 and which misrepresentations are the basis of the Regional Director's Supplemental Decision and Certification Of Representative in Case No. 16-RC-3714.

Respondent would show that although it has so requested, it was never granted a hearing by the said Regional Director upon its Objections To Conduct Affecting The Results Of Election and has, to this date, had no opportunity to present evidence at a hearing concerning the misrepresentations by the petitioning union as alleged in the said Objections To Conduct Affecting The Results Of Election. Therefore, in the absence of a hearing, Respondent has not had the subpoena or investigative power possessed by the said Regional Director and has, therefore, been unduly limited in its attempts to gather full, adequate, and the best evidence concerning said Objections. Nonetheless, Respondent has been able to obtain sufficient evidence, both primary and secondary, to show that material misrepresentations, both by

expression and by omission, were made by the petitioning union prior to the representation election held in Case No. 16-RC-3714, and that the Regional Director's Supplemental Decision and Certification of Representative, as to some of Respondent's objections, is in error, and, as to others, he has failed to make any finding.

II.

Respondent makes the following Offer Of Proof concerning the misrepresentations made by the petitioning union prior to the representation election held in Case No. 16-RC-3714:

LAREDO MANUFACTURING COMPANY, INC., LAREDO, TEXAS

A. Misrepresentations Concerning Union Contract At Laredo Manufacturing Company, Inc., Laredo, Texas.

(1) Facts As Represented By The Union.

- (a) The union represented to the employees of Respondent that every union member at Laredo Manufacturing Company, Inc. received a 25¢ per hour increase under the new union contract with that firm. (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714).
- (b) That the union contract provides a 25¢ per hour wage increase for cutting department employees. (See Exhibit "C" attached to Employer's Objections To Conduct Affecting The Results of Election in Case No. 16-RC-3714).

(2) Facts Not Stated By The Union.

- (a) The union did not state in its pre-election propaganda that the Laredo Manufacturing Company, Inc. manufactures dresses exclusively and that Respondent manufactures lingerie exclusively and are, therefore, not business competitors.
- (b) The union did not state in its pre-election propaganda that the new Laredo Manufacturing Company, Inc. union contract reduced the work week of the employees from

37-1/2 hours per week to 35 hours per week and that the increased wage scale was expressly for compensation for this reduced work week.

- (c) The union did not state in its pre-election propaganda that Laredo Manufacturing Company, Inc. employs the greatest majority of its workers on a piece-work basis.

B. Facts As Found By The Regional Director In His Supplemental Decision And Certification Of Representative In Case No. 16-RC-3714.

- (1) The Regional Director, after an ex parte investigation, found that the employees at Laredo Manufacturing Company, Inc. received a 15¢ per hour increase in wages effective July 6, 1964 for all persons employed over six months, and that an additional 10¢ per hour increase for operators becomes effective on September 6, 1965. That the Regional Director also found that 88% of the employees at Laredo Manufacturing Company, Inc. are operators.
- (2) That there is one cutter and one apprentice at the Laredo Manufacturing Company, Inc. plant. That these employees received their wage increases as a compensating increase to offset reductions in the work week from 37-1/2 hours per week to 35 hours per week. That the number of work hours of these employees was not reduced, but resulted in 2-1/2 hours per week additional overtime for these employees. Therefore, including the additional overtime, the resulting increase was about 23¢ per hour for the cutter and 19¢ per hour for the apprentice.
- (3) The Regional Director held that there was no merit in the Employer's contention that the companies compared to the Employer by the union are not competitors of Russell-Newman Manufacturing Company, Inc. This holding was made without any fact finding whatsoever.

- (4) The Regional Director found that the contract does, in fact, reduce the work week for the employees of Laredo Manufacturing Company, Inc. from 37-1/2 hours per week to 35 hours per week.
- (5) The Regional Director makes no holding or finding whatsoever concerning the fact, as alleged by the Employer in its Objections To Conduct Affecting The Results Of Election, that the said Employer hires all of its workers on an hourly basis, while the Laredo Manufacturing Company, Inc. hires the majority of its workers on a piece-work basis.

C. Respondent's Evidence Will Show The Following Facts:

- (1) The minimum wage for all employees at the Laredo Manufacturing Company, Inc. plant was \$1.25 per hour as of March 10, 1962.

The new union contract provides the following minimum wage scales for all workers at the Laredo, Texas plant:

\$1.25	Starting Wage
\$1.30	After 30 days
\$1.35	After 4 months
\$1.40	After 6 months

Thus, all employees received only a 15¢ per hour raise in minimum wage scales after a full six months, not a 25¢ per hour lump sum raise as is asserted by the union.

The minimum wage scales for operators at the Laredo, Texas plant are as follows:

\$1.25	Starting Wage
\$1.35	After 30 days
\$1.45	After 4 months
\$1.50	After 6 months

That some 69.9% of the employees at Laredo Manufacturing Company, Inc. are operators, as opposed to the 88% as found by the Regional Director. Thus, operators received a 25¢ per hour raise in minimum wage scales spread over a six-month period, not in a lump sum as asserted by the union. Thus, 30.1% of the employees received only a 15¢ per hour raise, and the remaining 69.9% received a total 25¢ per hour raise only after a six-month trial period.

The new union contract provides expressly that the increased wages for time workers, which was effective July 6, 1964, was to offset a reduction of work hours under the new contract from a previous 37-1/2 hours per week to a 35 hours per week. The union failed to point out this fact to Respondent's employees. This is important, as Respondent provides its employees with 40 hours work per week.

There is no guaranteed overtime work at Laredo Manufacturing Company, Inc. Therefore, most employees do not make up for the reduced work week in increased overtime.

The new union contract provides that hourly paid employees will receive \$1.40 per hour maximum with no provision for further increases. The union did not point this fact out. Since all of Respondent's employees are time employees, this is actually the most valid comparison which could have been made.

- (2) There is only one cutter in the Laredo, Texas plant. There is one cutting supervisor over this cutter. The union strongly implied that it had negotiated for and received benefits for a large cutting department at Laredo

Manufacturing Company, Inc. The wage rate for the one and only cutter in the plant is as follows:

July 11, 1964 \$1.75 per hour on a
35 hour week

February, 1965 \$1.87-1/2 per hour on
a 35 hour week

The wage rate for the cutting supervisor is as follows:

January 1, 1964 \$2.13-1/2 per hour on
a 35 hour week

July 11, 1964 \$2.13-1/2 per hour on
a 35 hour week

February, 1965 \$2.28-2/3 per hour on
a 35 hour week

Thus, the "cutting department employees" received, in one case, a 12-1/2¢ per hour raise, and in the other case, received an approximate 15¢ per hour raise, both over a period of time, not a 25¢ per hour lump sum raise as is asserted by the union. The Regional Director asserts that "including additional overtime," the cutting department employees received a 19¢ per hour and a 23¢ per hour raise, respectively. This is incorrect, as can be seen from the above.

There is occasional overtime pay for the above mentioned employees, but it is not guaranteed.

- (3) The Respondent will show that there is a vast and fundamental difference between a company which manufactures ladies' dresses exclusively and one which manufactures ladies' and children's lingerie exclusively. It will be shown that this difference directly affects the duties of the employees, the markets, the overhead expenses, and, thus, the labor costs of the companies involved. The evidence will show that the Laredo Manufacturing Company, Inc. is, in fact, not a competitor of this

Respondent, and the evidence will, therefore, show that any comparison of these two companies, as this comparison was made by the union, has no validity whatsoever and is, in fact, misleading.

- (4) The Laredo Manufacturing Company, Inc.'s union contract reduces the work week for the employees from 37-1/2 hours per week to 35 hours per week. The evidence will show that the Respondent has regularly provided its employees with 40 hours work per week, and, thus, the evidence will show that the union's failure to state this fact misled Respondent's employees concerning the comparison of benefits between the Laredo Manufacturing Company, Inc. and Respondent.
- (5) The evidence will show that this Respondent employs all of its employees on an hourly basis. The evidence will further show that this was a major point during the election campaign herein and that this petitioning union promised certain of Respondent's employees who did not want piece work at Respondent's plant that there would not be piece work without the consent of these said employees. Therefore, the union's failure to state that a majority of the employees at Laredo Manufacturing Company, Inc. were piece workers was calculated to mislead and did mislead the Respondent's employees concerning employee benefits and working conditions at the Laredo Manufacturing Company, Inc. plant when compared to Respondent's plant.

BOBBIE BROOKS, INC.

- A. Misrepresentations Concerning Union Contract With Subsidiaries Of Bobbie Brooks, Inc. Located In West Helena and Lepanto, Arkansas.

- (1) The union asserted that the new union contracts with subsidiaries of Bobbie Brooks, Inc. located in West Helena and Lepanto, Arkansas provide a minimum wage of \$1.73 per hour for operators. (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)
- (2) The union asserted that the said new union contracts provide \$3.10 per hour for cutters. (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)
- (3) The union asserted that the said new union contracts provide \$2.05 per hour for spreaders. (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)
- (4) The union asserted that shipping department employees at the Bobbie Brooks, Inc. shops received increases which amounted to 22¢ per hour. (See Exhibit "C" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)
- (5) The union asserted that time workers, other than cutters, spreaders, operators, and shipping department employees, received a 22¢ per hour increase under the new union contracts. (See Exhibit "C" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)

B. Facts As Found By The Regional Director In His Supplemental Decision And Certification Of Representative In Case No. 16-RC-3714.

- (1) The Regional Director found that the contract between the union and Bobbie Brooks, Inc. was negotiated by nation-wide bargaining and that the same has not been published or distributed on a local level "as of this writing." (See Supplemental Decision And Certification Of Representative in Case No. 16-RC-3714). It can, therefore, be seen that the Regional Director, in making his findings and holdings as regards this matter, did not have the proper evidence before him by which to make such a holding.
- (2) The Regional Director further held that, based upon an examination of two newspaper articles which were attached to the Employer's Objections To Conduct Affecting The Results Of Election and the expired Bobbie Brooks, Inc. contract, the petitioning union's assertions in its pre-election propaganda with respect to the Bobbie Brooks, Inc. agreement were both correct and truthful. This is an admission by the Regional Director that he has never examined the proper evidence, to-wit, the very Bobbie Brooks, Inc. contract referred to in the union's pre-election assertions.

C. Respondent's Evidence Will Show The Following Facts:

- (1) That the piece workers at Bobbie Brooks, Inc. obtained an increase from \$1.60 per hour in 1964 to \$1.73 per hour in 1967; and that time workers, excluding cutters, will receive minimum increases ranging from 20¢ per hour to 35¢ per hour above the Federal minimum wage of \$1.25 per hour. The relevant contract provision as shown in Exhibit "E" attached to Employer's Objections To Conduct Affecting The Results Of Election is as follows:

"Minimum Wage - Piece Workers (Experienced)

The master pact provides major gains in its schedule of minimum wage rates. In the case of piece workers, the increase will go from \$1.60 in 1964 to \$1.73 in 1967. Following is the schedule:

January 4, 1963	\$1.65
January 3, 1965	\$1.70
January 3, 1967	\$1.73"

- (2) That some cutters at Bobbie Brooks, Inc. shops will receive \$3.10 per hour, but that some will receive only \$2.75 per hour.
- (3) That while some spreaders will receive \$2.05 per hour at Bobbie Brooks, Inc. shops, some spreaders will receive only \$1.89 per hour and some will receive only \$1.80 per hour under the new union contract.
- (4) That the shipping department employees at the Bobbie Brooks, Inc. shops, under the new union contract, will receive 22¢ per hour increases, but this increase is spread over the three-year period of the contract.
- (5) All other time workers at the Bobbie Brooks, Inc. shops, excluding spreaders, cutters, operators, and shipping department employees, will receive a 22¢ per hour increase as follows:

**"Wage Increase - Time Workers - 22¢
(Excluding Service Bundle Workers)**

January 4, 1965	9¢
January 3, 1966.	9¢
January 3, 1967	4¢
	<u>22¢"</u>

- (6) The Respondent will show that there is a vast and fundamental difference between a company which manufactures ladies' dresses exclusively and one which manufactures ladies' and children's lingerie exclusively. It will be shown that this difference directly affects the duties of the employees, the markets, the overhead expenses, and, thus, the labor costs of the companies involved. The evidence will show that the subsidiaries of Bobbie Brooks, Inc. are not, in fact, competitors of this Respondent, and the evidence will, therefore, show that any comparison of these companies, as this comparison was made by the union, has no validity whatsoever and is, in fact, misleading.

THE NARDIS COMPANY OF DALLAS, TEXAS

A. Misrepresentations Concerning Union Contract With The Nardis Company Of Dallas, Texas.

- (1) The union represented that "at the start of talks for a new union contract" the Nardis Company had "already offered the union a 15¢ per hour raise in minimum wages." (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)
- (2) "At the start of talks for a new union contract" the Nardis Company had offered the union "more holiday pay". (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)

- (3) "At the start of talks for a new union contract" the Nardis Company was "looking favorably on granting two weeks paid vacation for anyone who has worked for two years or longer." (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election In Case No. 16-RC-3714.)

B. Facts As Found By The Regional Director In His Supplemental Decision And Certification Of Representative In Case No. 16-RC-3714.

- (1) The Regional Director found that since the petitioning union's leaflet (Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714) reflects that negotiations are in progress and such leaflet makes no claim as to a final agreement with the company, "it is concluded that no false or misleading impressions were conveyed by the statement concerning the status of negotiations, which are, in fact, under way."

C. Respondent's Evidence Will Show The Following Facts:

- (1) Respondent will show that the union contract has not, as of this date, been signed by the parties.
- (2) That the agreement which has now been reached between the Nardis Company and the union provides for a 7-1/2¢ per hour raise immediately from \$1.40 per hour and then a 7-1/2¢ per hour raise in 18 months. Respondent will show that the Nardis Company never offered the union a flat 15¢ per hour raise in minimum wages "at the start of talks" as is implied in the union leaflet. The Respondent will further show that the first offer made by the Nardis Company "at the start of talks"

was for a 4¢ per hour raise in the first year, followed by a 4¢ per hour raise the second year, and finally a 3¢ per hour raise the third year. Thus, the initial offer as made by the Nardis Company "at the start of talks" was for a total of 11¢ per hour raise split over a three-year period and was not, as stated by the union, a lump sum offer of an immediate 15¢ per hour raise.

- (3) The Nardis Company, in negotiations, never offered the union "more holiday pay at the start of talks." The Respondent will show that the parties finally agreed upon an additional one-half day holiday on the day before Christmas. This is not an offer of "more holiday pay" as is asserted by the union leaflet.
- (4) The Respondent will show that the Nardis Company never "looked favorably at the start of talks", or at any time, on granting the employees two weeks paid vacation for anyone who had worked for over two years. The Respondent will also show that the initial offer made by the Nardis Company was for a three-week paid vacation for anyone after 20 years of employment. The union then countered this offer by the company with a demand for two weeks paid vacation after two years employment. The Respondent will show that this was as far as negotiations had progressed at the time the union leaflet (Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714) was passed out at the plant, and, therefore, the claim in the leaflet by the union that the company was "looking favorably" upon a two-week paid vacation after two years of employment is totally false.

- (5) The Respondent will show that there is a vast and fundamental difference between a company which manufactures ladies' dresses exclusively and one which manufactures ladies' and children's lingerie exclusively. It will be shown that this difference directly affects the duties of the employees, the markets, the overhead expenses, and, thus, the labor costs of the companies involved. The evidence will show that the Nardis Company is, in fact, not a competitor of this Respondent and the evidence will, therefore, show that any comparison of these two companies, as this comparison has been made by the union, had no validity whatsoever and is, in fact, misleading.

KABRO OF HOUSTON, INC.

A. Misrepresentations Concerning Union Contract With Kabro Of Houston, Inc.

- (1) The union asserts that the new contract between the union and Kabro Of Houston, Inc. provides a minimum wage of \$1.60 per hour. (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)
- (2) The union asserts that a 25¢ per hour general increase is granted under the new union contract for time workers. (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)
- (3) The union asserts that the new union contract grants a 25¢ per hour wage increase to members of the cutting

and shipping department at Kabro Of Houston, Inc.
(See Exhibit "C" attached to Employer's Objections
To Conduct Affecting The Results of Election in
Case No. 16-RC-3714.)

- (4) The union asserts that "the vast majority of the more than 200 workers at Kabro earn far more than \$1.60 an hour." (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)

B. Facts As Found By The Regional Director In His Supplemental Decision And Certification Of Representative In Case No. 16-RC-3714.

- (1) The Regional Director found that an agreement was reached between the union and Kabro Of Houston, Inc. in April of 1964 and that the wage increases agreed upon were immediately put into effect.
- (2) That before the above contract could be reduced to writing, Kabro Of Houston, Inc. sold its plant to another employer and that an agreement with this new employer is now being negotiated.
- (3) That the wage rates in effect at the time of the sale of Kabro Of Houston, Inc. have not been altered by the purchaser.
- (4) That the unsigned Kabro contract provides a 25¢ per hour increase over a three-year period, broken down as follows:

10¢	Effective 1964
10¢	Effective April, 1965
5¢	Effective April, 1966

That piece workers are provided a 6-1/2% increase effective in April, 1964; final inspectors and floor girls suffer a decrease in the work week from 40 hours to 37-1/2 hours per week without any loss of pay.

- (5) The Regional Director finds that the "Petitioner contends that the only workers at Kabro earning less than \$1.60 per hour are newly hired, inexperienced workers who are paid a 'learner's rate'". (This finding can only have been based upon an ex parte interview with representatives or agents of the petitioning union, the benefit of which interviews the Respondent has not had nor has Respondent had a right to cross-examine such witnesses).
- (6) That cutters in the cutting and shipping department at Kabro are included in the bargaining unit, but that shipping clerks are not.
- (7) That cutters receive the benefits negotiated by the union, and shipping employees were voluntarily granted equal benefits by the company.

C. Respondent's Evidence Will Show The Following Facts:

- (1) The Respondent will show that a contract between Kabro Of Houston, Inc. and the union has not, as of this date, been signed by both parties. Thus, the union's assertion of what "the new union contract at Kabro, Inc." provides, if not totally false, is calculated to be, and is, misleading. The union totally failed to point out that Kabro Of Houston, Inc. had, in fact, been sold to a successor employer, very

possibly because of hard bargaining tactics on the part of the union in regards to the very benefits which the union asserted to Respondent's employees. Instead, the union implied that it had a firm contract with Kabro Of Houston, Inc., when, in fact, it had, and still has, no formal contract whatsoever.

- (2) The Respondent will show that the agreement which has not yet been signed by both parties, in fact, escalated wages from \$1.25 per hour to \$1.50 per hour over a three-year period. This, again, is not a lump sum raise of 25¢ per hour as the union asserts. Thus, this was, again, calculated to deceive the Respondent's employees.
- (3) Respondent will show that the minimum wage of \$1.60 per hour, as asserted by the union, applies only to piece workers at Kabro Of Houston, Inc. The union failed to point this out in its statement. As stated above, Respondent's employees are all hourly paid employees, and, thus, the union's statement is misleading.
- (4) Further, Respondent will prove that the employees at Kabro Of Houston, Inc. who do earn more than \$1.60 per hour are all piece work employees. Again, the comparison by the union with these employees and Respondent's employees who are all hourly employees, was invalid and misleading.
- (5) The Respondent will show that the 25¢ per hour raise claimed by the union does not apply to the shipping department at Kabro Of Houston, Inc. Thus, the union's statement that the "agreement grants a 25¢ per hour wage increase to members of the Cutting and Shipping

Departments" is a statement calculated to deceive the Respondent's employees, in that the shipping clerks who would be the class of employees who would normally form any shipping department, and who form the shipping department at the Respondent's plant, are not even under a union contract. The fact that the shipping clerks at Kabro Of Houston, Inc. were not under the union contract was expressly found by the Regional Director. The Regional Director, in his Decision, excuses this misrepresentation by the union on the technical finding that "Cutters in the Cutting and Shipping Department at Kabro are included in the unit . . ." This fact, if true, is a mere technicality of which the union was well aware when it made its broad, general statement as regards "the members of the Cutting and Shipping Departments."

AMEDEE FROCKS, INC., LAREDO, TEXAS

A. Misrepresentations Concerning Union Contract At Amedee Frocks, Inc., Laredo, Texas.

(1) Facts As Represented By The Union.

- (a) The union asserted that the new union contract between the union and Amedee Frocks, Inc. provides every union member with a 25¢ per hour wage increase. (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)

(2) Facts Not Stated By The Union.

- (a) The union did not state in its pre-election propaganda that Amedee Frocks, Inc. manufactures dresses exclusively and that Respondent manufactures lingerie exclusively and are, therefore,

not business competitors.

- (b) The union did not state in its pre-election propaganda that the greater majority of the employees at Amedee Frocks, Inc. are piece workers.
- (c) The union did not state in its pre-election propaganda that the increase in wage scales at Amedee Frocks, Inc. was in compensation for a reduction of the work week.

B. Facts As Found By The Regional Director In His Supplemental Decision And Certification Of Representative In Case No. 16-RC-3714.

- (1) The Regional Director found that the employees at Amedee Frocks, Inc. received a 15¢ per hour increase in wages and will receive the full 25¢ per hour increase in wages during the term of the contract.

C. Respondent's Evidence Will Show The Following Facts:

- (1) The Respondent will show that the employees of Amedee Frocks, Inc. did not receive a 25¢ per hour lump sum raise as was implied by the union, but that, in fact, the raise received by the employees of Amedee Frocks, Inc. was spread out over the period of the contract. Thus, the union, by its statement concerning a lump sum 25¢ per hour raise, attempted to, and did, mislead the Respondent's employees.
- (2) The Respondent will show that there is a vast and fundamental difference between a company which manufactures ladies' dresses exclusively and one which manufactures ladies' and children's lingerie exclusively.

It will be shown that this difference directly affects the duties of the employees, the markets, the overhead expenses, and, thus, the labor costs of the companies involved. The evidence will show that Amedee Frocks, Inc. is, in fact, not a competitor of this Respondent, and the evidence will, therefore, show that any comparison of these two companies, as this comparison was made by the union, has no validity whatsoever and is, in fact, misleading.

- (3) That the greater majority of employees at Amedee Frocks, Inc. are piece workers. That all of the employees at Respondent's plant are hourly paid employees. As stated above, this was a major issue in the election campaign and an issue upon which the union took the position that piece work would not come to Respondent's employees. Since this was a major issue in the election campaign, the union chose not to point this fact out to Respondent's employees when asserting benefits it had gained at Amedee Frocks, Inc.
- (4) The Respondent will show that Amedee Frocks, Inc. does not regularly provide its employees with 40 hours work per week. Respondent does provide its employees with 40 hours of work per week. The union failed to point this fact out, and, thus, by its omission, attempted to convey, and did convey, to Respondent's employees the implication that all other working conditions and benefits at Amedee Frocks, Inc. were equal to those at Respondent's plant.

- (5) Respondent will show that the raises granted at Amedee Frocks, Inc. were granted as compensation for a reduction in the work week.
- (6) Respondent will show that the union contract with Amedee Frocks, Inc. provides a maximum payment to hourly employees, which payment does not represent a 25¢ per hour increase, and that there is no provision for a later increase. The union failed to point this fact out or to draw this comparison in its statement. This would have been a much more valid comparison between the Respondent's plant and Amedee Frocks, Inc., since, as pointed out above, all of Respondent's employees, are hourly paid employees and not piece workers.

ARTEMIS-GOSSARD COMPANY, BRISTOW, OKLAHOMA

A. Misrepresentations Concerning Union Contract At Artemis-Gossard Company, Bristow, Oklahoma.

- (1) That on November 1, 1964, the union members at Artemis-Gossard Company received a 5¢ per hour increase as provided for in the union contract that they already had. (See Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.)

B. Respondent's Evidence Will Show The Following Facts:

- (1) The Respondent will prove that the Artemis-Gossard Company's union contract was not in effect between this union and the said company until November 30, 1964. Thus, the union, by its statement, blatantly attempted to advance the date it had received a 5¢

per hour raise for the employees at Artemis-Gossard by one full month. When taken with the rest of the misrepresentations set out above in this instrument, this seemingly minor discrepancy becomes important from the standpoint of the union's entire motive and intent in regards to all of its statements as contained in the leaflet which is identified as Exhibit "A-2" attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714.

- (2) The Respondent will prove that the actual provisions of the Artemis-Gossard contract, referred to by the union, are as follows:

"Effective 9/30/63

\$1.35	After trial period
\$1.40	After 6 months' service
\$1.45	After 9 months' service

Effective 11/30/64

\$1.35	After trial period
\$1.45	After 6 months' service
\$1.50	After 9 months' service"

Thus, from the above it can be seen that the union failed to mention that the 5¢ per hour raise which it asserted to the Respondent's employees was not an across-the-board, unconditional raise, but was, in fact, as seen from the actual contract provision above, a conditional raise based upon completion of a six-month "trial period" in the first instance, followed by a second "trial period" of three months. Respondent will show that this is a highly important fact that the union failed to point out, in that Respondent has no such "trial periods" as regards its employees, and, therefore, the union felt it more expedient

to their campaign not to mention the fact that an employer with whom it had a contract had such "trial periods."

III.

In addition to the above matters, the Respondent, at the time of the hearing hereof, would prove the following facts:

- (1) That the representation election held in Case No. 16-RC-3714 was held on the afternoon of January 26, 1965 at Respondent's Denton, Texas plant.
- (2) That on January 23, 1965, a Saturday, the petitioning union caused a letter to be mailed to the employees of Respondent, and, included in the same envelope with such letter was a union "Newsletter" dated January 25, 1965, a copy of which Newsletter is attached to the Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714 and identified as Exhibit "A-2".
- (3) That the above said letter and Newsletter was not received by the majority of the employees of Respondent, eligible to vote in the said representation election, until Monday evening, January 25, 1965, less than twenty-four (24) hours prior to the said representation election.
- (4) That on the morning of January 26, 1965 (the day of the election) the petitioning union caused to be handed out to the employees eligible to vote in the said representation election a handbill, a copy of which handbill is attached to Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714 and identified as Exhibit "C".

- (5) That, as set out specifically above in this instrument, many statements contained in the above said Newsletter and handbill were false and misleading and the mailing and distribution thereof was so timed so as to prevent any replies by this Respondent prior to the representation election herein, and, further, the statements were calculated to, and did, in fact, deceive Respondent's employees as to material facts; and they were calculated to, and did, have a significant impact on the said representation election. That the facts stated in such handbill and Newsletter are facts which were peculiarly within the knowledge of the petitioning union, and the Respondent's employees were not in a position to make an intelligent evaluation of such statements prior to the said representation election herein.
- (6) That in connection with the above Offer Of Proof, the Respondent would specifically call the Trial Examiner's attention to the case of Hollywood Ceramics Co., 140 NLRB 36, 51 LRRM 1600, 1962. In this case the National Labor Relations Board held as follows:

"We believe that an election should be set aside where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election."

Respondent submits that the facts set out above, which Respondent here offers to prove, bring this case squarely within the Board's said ruling.

IV.

Respondent submits that upon the proving of the above matters at a hearing hereof, it will be evident that the ex parte investigation made by the Regional Director in response to the Employer's Objections To Conduct Affecting The Results Of Election in Case No. 16-RC-3714, the results of which investigation are set out in the Regional Director's Supplemental Decision and Certification Of Representative in said case, failed to uncover many items of extremely important evidence. It is again pointed out that Respondent expressly requested both the Regional Director and the National Labor Relations Board to grant it a hearing concerning its said Objections, at which hearing Respondent would have been able to have made full use of the subpoena power in order to present the above evidence to the Regional Director. This request for a hearing was denied Respondent.

In addition to the above itemized evidence, Respondent will have, in its opinion, other evidence that will indicate that some of the contracts referred to by the union were even more grossly misrepresented than as indicated above.

V.

In conclusion, Respondent again states that the above Offer Of Proof is an offer which is based upon primary and secondary evidence and consists of the best evidence that Respondent has been able to obtain in the absence of the subpoena and investigative powers which are available to the Board. That if Respondent is now granted a hearing in this matter, it will be necessary for it to be allowed to make full use of the compulsory subpoena powers of the National Labor Relations Board in order to bring the best evidence to the Trial Examiner concerning the above facts. Much of the source for the evidence needed by Respondent, if not actually adverse

to Respondent, is, at best, reluctant. Respondent in this matter has exhausted every available effort and has, in each instance, been denied pre-hearing discovery, so that evidence relevant to the issues in this matter could be uncovered and established. The only remaining remedy available to Respondent, as guaranteed to it by the Administrative Procedure Act and the Labor Management Relations Act, as amended, is a full hearing wherein Respondent is afforded the subpoena power of the Board to obtain and examine adverse and/or reluctant witnesses and documentary evidence to support its contentions. A reading of the Regional Director's Supplemental Decision and Certification Of Representative will support the conclusion that the basis of the Regional Director's findings was obtained substantially, if not solely, from the very union whose conduct and representations are questioned by Respondent. The Regional Director admits that he did not examine the applicable contract from Bobbie Brooks, Inc. Respondent is within its rights to suspect that the union representatives, who misrepresented and/or withheld material facts from Respondent's employees, might do the same with the Regional Director. The facts of this matter are peculiarly within the possession of said union, in that in each instance, it was a party to the very contracts that were misrepresented.

WHEREFORE, this Offer Of Proof considered, the Respondent prays that the Trial Examiner overrule the General Counsel's Motion For Judgment On The Pleadings filed herein, and that the Trial Examiner order that a full and complete hearing be held in this cause, and that Respondent be allowed the full compulsory subpoena power of the National Labor Relations Board in order to collect and present its evidence herein.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: /s/ Fritz Lyne

By: /s/ George C. Dunlap

4000 First National Bank Bldg.
Dallas, Texas 75202

Attorneys For Respondent

[Certificate of Service]

GC EXHIBIT 1(ff)

C O P Y

NLRB/TX DIV. /FUR/as

JAMES A. KING, JR., ESQ.
NATIONAL LABOR RELATIONS BOARD
SIXTH FLOOR, MEACHAM BLDG.
110 WEST FIFTH STREET
FORT WORTH, TEXAS

FRITZ LYNE, ESQ.
LYNE, BLANCHETTE, SMITH & SHELTON
4000 FIRST NATIONAL BANK BLDG.
DALLAS, TEXAS

DAVID R. RICHARDS, ESQ.
MULLINAX, WELLS, MORRIS & MAUZY
1601 NATIONAL BANKERS LIFE BLDG.
DALLAS, TEXAS

RE RUSSELL NEWMAN, CASE NO. 16-CA-2318. GENERAL COUNSEL'S
MOTION FOR SUMMARY JUDGMENT DENIED. HEARING POST-
PONED TO MONDAY, JUNE 21, AT 1 P.M. C.S.T. CHARGING
PARTY'S MOTION FOR AN ORDER PROVIDING SPECIFIC RELIEF
WILL NOT BE RULED ON PRIOR TO HEARING.

FREDERICK U. REEL, TRIAL EXAMINER

6-4-55 3:45 P.M.

GC EXHIBIT 1 (hh)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SIXTEENTH REGION

RUSSELL-NEWMAN MANUFACTURING CO., INC.)

and)

INTERNATIONAL LADIES' GARMENT WORKERS'
UNION, AFL-CIO)Case No.
16-CA-2318

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from June 21, 1965, to July 6, 1965, at 1:00 p. m., in the County Courtroom of the County Courthouse, in the City of Denton, Texas.

DATED at Forth Worth, Texas, this 11th day of June, 1965.

/s/ Elmer Davis
Regional Director,
National Labor Relations Board

GC EXHIBIT 1 (mm)

TELETYPE MESSAGE

BFT ELMER DAVIS DIR NLRB FT WORTH TEXAS

BDL LYNE, BLANCHETTE, SMITH & SHELTON

ATT FRITZ LYNE 4000 FIRST NATL BANK BLDG DALLAS TEXAS
BDL MULLINAX, WELLS, MORRIS & MAUZY ATT DAVID R.RICHARDS 1601 NATL BANKERS LIFE BLDG DALLAS TEXAS
WWAL 2 NLRB

WASHINGTON DC 7-14-65 0903R

RE: RUSSELL-NEWMAN MFG. CO., 16-CA-2318. IT IS HEREBY
ORDERED THAT GENERAL COUNSELS REQUEST FOR SPECIAL
PERMISSION TO APPEAL TRIAL EXAMINERS RULING DENYING
MOTION FOR JUDGMENT ON THE PLEADINGS BE, AND IT HEREBY
IS, DENIED. BY DIRECTION OF THE BOARD:

GEORGE A LEET ASSOC EXEC SECY

GC EXHIBIT 2(a)

PETITION TO REVOKE SUBPENA

Comes now Bill Klein, Vice President of Bobbie Brooks, Inc., and respectfully petitions the National Labor Relations Board to revoke the Subpena Duces Tecum issued by it upon request of Russell-Newman Manufacturing Co., Inc., for the following reasons:

1. Bobbie Brooks, Inc. is not involved either directly or indirectly with the proceedings in the above entitled matter.
2. Bobbie Brooks, Inc. does not now have, or has it at any time ever had, either directly or indirectly, any dealings with Russell-Newman Manufacturing Co., Inc.
3. The information requested, for the foregoing reasons, cannot in any manner materially relate to subject matter of the Board hearing.
4. To furnish all payroll records for approximately 750 employees for a three year period would require Bobbie Brooks, Inc. to expend a great deal of time and money in what would appear to be a fishing expedition by respondent, Russell-Newman Manufacturing Co., Inc.

Respectfully submitted this 2nd day of June, 1965, at Cleveland, Ohio.

ROSENFELD & PALAY

By: /s/ Robert T. Rosenfeld

STATE OF OHIO)
) SS.
CUYAHOGA COUNTY)

BILL KLEIN, Vice President of Bobbie Brooks, Inc., being first duly sworn according to law, deposes and says that he has read the foregoing Petition and the facts stated are true as he verily believes.

/s/ Bill Klein

[JURAT 3rd day of June, 1965]

[Certificate of Service]

GC EXHIBIT 2 (b)

PETITION TO REVOKE SUBPOENA DUCES TECUM

COMES NOW Hugh Frank Malone, Regional Attorney, Sixteenth Regional Office, National Labor Relations Board, and James A. King, Jr., Counsel for the General Counsel in the above entitled proceeding and for and on behalf of Elmer Davis, Regional Director, Sixteenth Regional Office, National Labor Relations Board, Fort Worth, Texas, file this Petition to Revoke Subpena Duces Tecum served upon him on June 2, 1965, at the request of Counsel for the above named company and in support of said Petition show the following, to-wit:

1.

The said Elmer Davis is an employee of the National Labor Relations Board in the capacity indicated above and any and all knowledge or information which he might have concerning the above proceeding and, specifically, the documents requested in the subpoena (attached hereto as Exhibit A and made a part hereof) was obtained by him in connection with the performance of his official and professional duties as an employee of the National Labor Relations Board.

2.

The said subpoena was not properly served upon the said Elmer Davis in that no witness fee was tendered. Board's Rules and Regulations, Section 102.66(g); Rule 45, Federal Rules of Civil Procedure; General Shoe Corporation, 122 NLRB 619 FN 2.

3.

Any and all testimony which might be given by the said Elmer Davis and any documents requested by the subpoena are irrelevant, immaterial and incompetent to the above proceeding. The subpoenaed documents and the testimony of the said Elmer Davis would all relate to the company's Objections to Conduct Affecting an Election which has been previously litigated and is irrelevant in this refusal to bargain unfair labor practice proceeding. The Board's Rules and Regulations,

Section 102.67, Series 8, as amended, Mountain States Telephone & Telegraph Co., 136 NLRB 1612, enfd. 310 F. 2d 478 (C.A. 10), cert. denied 371 U.S. 875. O.K. Van and Storage, Inc., 127 NLRB 1537 enfd. 297 F. 2d 74 (C.A. 5); NLRB v. Zelrich Company, 59 LRRM 2225 (C.A. 5); NLRB v. Schill Steel Products, Inc., 58 LRRM 2177, 2181 (C.A. 5); NLRB v. Manning, Maxwell & Moore, Incorporated, 324 F. 2d 857, (C.A. 5) enfg. 143 NLRB 5.

4.

Under Section 102.118 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the Regional Director is prohibited from testifying in this matter pursuant to the subpoena duces tecum without the written consent of the Board or the Chairman of the Board if the Regional Director is subject to the supervision or control of the Board or the General Counsel if the Regional Director is subject to the supervision or control of the General Counsel. The General Counsel of the National Labor Relations Board has declined to give his written consent for the said Elmer Davis to testify. Written consent has not been received from the Board or the Chairman of the Board to comply with the subpoena served in connection with this matter.

5.

Section 102.118 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, makes the testimony and documents sought by the subpoena privileged against disclosure.

For the foregoing reasons and pursuant to Section 102.118 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the undersigned respectfully petition the revocation of the aforesaid subpoena duces tecum.

DATED at Fort Worth, Texas, this 7th day of June, 1965.

/s/ Hugh Frank Malone
Regional Attorney, NLRB
Sixteenth Region

/s/ James A. King, Jr.
Counsel for the General Counsel
NLRB, Sixteenth Region

[Certificate of Service]

EXHIBIT A to
GC Ex. 2(b)

SUBPENA DUCES TECUM
UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To: The Honorable Elmer Davis, Regional Director

For the Sixteenth Region, National Labor Relations Board

Request therefor having been duly made by: Russell-Newman

Manufacturing Company, Inc. whose address is: Denton, Texas

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a Trial Examiner of the National Labor Relations Board at the hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the City of Fort Worth, Texas, on the 9th day of June, 1965, at 10:00 o'clock a.m. of that day, to testify in the Matter of Russell-Newman Manufacturing Co., Inc. and International Ladies' Garment Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents: A copy of the current union contracts between Amedee Frocks and Laredo Mfg. Co.,; Kabro, Inc; Bobbie Brooks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO; and all written correspondence, memorandums, and statements of witnesses in the files or under the control of the said Regional Director entered into or received in connection with the Supplemental Decision And Certification Of Representative in Case No. 16-RC-3714. (As regards Bobbie Brooks, Inc. contracts, please bring those which apply to Bobbie Brooks, Inc.'s subsidiary operations in West Helena and Lepanto, Arkansas.)

In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand and authorized the issuance hereof.

Issued at Fort Worth, Texas this 27th day of May, 1965

B-55100
(NLRB Seal)

/s/ John H. Fanning

GC EXHIBIT 2(c)

**ORDER REFERRING PETITIONS TO REVOKE SUBPENA DUCES TECUM
TO TRIAL EXAMINER FOR RULING**

On June 7, 1965, Counsel for the General Counsel in the above entitled matter filed with the undersigned a Petition to Revoke Subpena Duces Tecum.

On June 7, 1965, Bill Klein, Vice President of Bobby Brooks, Inc., filed with the undersigned a Petition to Revoke a Subpena Duces Tecum served upon him at the request of Russell-Newman Manufacturing Co., Inc., in connection with the above entitled matter.

IT IS HEREBY ORDERED, pursuant to Section 102.31(b) of the Board's Rules and Regulations, Series 8, as amended, that said Petitions be, and the same hereby are, referred to a trial examiner for ruling.

Dated at Fort Worth, Texas, this 7th day of June, 1965.

/s/ Elmer Davis
Regional Director, NLRB

GC EXHIBIT 2(e)

PETITION TO REVOKE SUBPOENA

Now comes John Vickers, and pursuant to the rules and regulations of the National Labor Relations Board, files his Motion to Revoke a Subpoena duces tecum heretofore served upon him (a copy of which is appended hereto) for the reasons that:

1. Said subpoena seeks to obtain the production of material that is immaterial and irrelevant to any issues in this pending cause;

2. Said subpoena was not served in the manner prescribed by the rules and regulations of the National Labor Relations Board;
3. There was no tender of necessary witness fee or mileage allowance accompanying the subpoena;
4. The subpoena is oppressive and burdensome and it represents a fishing expedition by respondent.

WHEREFORE, PREMISES CONSIDERED, your applicant prays that subpoena heretofore issued be quashed.

Respectfully submitted,

MULLINAX, WELLS, MORRIS & MAUZY
1601 National Bankers Life Building
Dallas, Texas

By: /s/ David R. Richards

ATTORNEYS FOR JOHN VICKERS

EXHIBIT A to
GC EX. 2(e)

SUBPENA DUCES TECUM

To: Mr. John Vickers of the International Ladies' Garment Workers' Union, AFL-CIO

Request therefor having been duly made by: Russell-Newman

Manufacturing Company, Inc. whose address is Denton, Texas
YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE
a Trial Examiner of the National Labor Relations Board, at the
hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the
City of Fort Worth, Texas on the 9th day of June, 1965, at 10:00
o'clock a. m. of that day, to testify in the Matter of Russell-Newman
Manufacturing Co., Inc. and the International Ladies' Garment
Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at
said time and place the following books, records, correspondence, and
documents: A copy of the current union contracts and a copy of the
union contracts immediately preceding the current union contracts be-
tween Amedee Frocks and Laredo Mfg. Co.; Kabro, Inc.; Bobbie
Brooks, Inc.; the Nardis Company and the International Ladies'
Garment Workers' Union, AFL-CIO; and all written correspondence
and memorandums in the possession of the International Ladies' Gar-
ment Workers' Union, AFL-CIO concerning the collective bargaining
negotiations in regard to the latest union contract between the said
union and the Nardis Company (As regards Bobbie Brooks, Inc. con-
tracts, please bring those which apply to Bobbie Brooks, Inc.'s
subsidiary operations in West Helena and Lepanto, Arkansas.)

In testimony whereof, the seal of the National Labor
Relations Board is affixed hereto, and the undersigned, a
member of said National Labor Relations Board, has hereunto
set his hand and authorized the issuance hereof.

Issued at Fort Worth, Texas this 27th day of May, 1965.

B-55101
(NLRB Seal)

/s/ John H. Fanning

GC EXHIBIT 2(h)

**RESPONSE TO PETITION TO
REVOKE SUBPENA RE BILL KLEIN**

TO THE HONORABLE TRIAL EXAMINER:

Comes now, RUSSELL-NEWMAN MANUFACTURING CO., INC. and in response to Petition to Revoke Subpena filed on behalf of Bill Klein in the above styled and numbered cause would show the following:

1. Grounds numbered 1 and 2 in said Petition to Revoke are immaterial.
2. The Charging Party in connection with its election campaign to organize Respondent's employees has made certain representations concerning charging party's labor contract with Bobbie Brooks, Inc., which Respondent contends are false and which vary materially from the contents of said contract as reflected by press releases issued or permitted by Bobbie Brooks, Inc. Respondent has exhausted all avenues of securing an authentic copy of the said Bobbie Brooks, Inc. contract which would be admissible in evidence in this matter, including but not limited to Requests for Admissions, Written Interrogatories, and Subpenas to both Charging Party and General Counsel, both of whom have filed Petitions to Revoke. An authentic copy of said contract, admissible in evidence in this matter, is essential to Respondent's defense herein, and a denial of process by which Respondent can obtain such a copy would constitute a denial of due process. Thus paragraph 3 of said Petition to Revoke is without merit.
3. In paragraph 4 of said Petition to Revoke it is alleged that said subpena should be revoked because it imposes an expenditure of time and money on the witness Klein. Public policy justifies, as in all other cases of subpena, the expenditure of time over and above

witness fees provided by law, and the Rules and Regulations of the Board impose upon Respondent the obligation to pay witness fees and mileage which Respondent is prepared to do, and will tender in advance if the Trial Examiner so orders it to do so.

WHEREFORE, PREMISES CONSIDERED, Respondent prays that said Motion to Revoke Subpena on behalf of Bill Klein be denied.

Respectfully submitted,
LYNE, BLANCHETTE, SMITH & SHELTON

By: /s/ Fritz L. Lyne

4000 First National Bank Bldg.
Dallas, Texas 75202
Telephone: RIVERSIDE 1-4871

ATTORNEYS FOR RESPONDENT,
RUSSELL-NEWMAN MANUFACTURING CO., INC.

[Certificate of Service]

GC EXHIBIT 2(j)

Law Offices
Ligarde, Garcia, Wilson & Gutierrez

* * *

Laredo, Texas

June 8, 1965

Hon. John H. Fanning
National Labor Relations Board
United States of America
Meacham Building
110 W. 5th Street
Fort Worth, Texas

RE: Russell-Newman Manufacturing
Company, Inc. and International Ladies'
Garment Workers' Union, AFL-CIO
Case No. 16-CA-2318

Dear Sir:

I am forwarding herewith petition to revoke subpoena issued on the 31st day of May, 1965, to the undersigned as representative of Amedee Frocks, Inc. Inasmuch as I am not acquainted with the rules and regulations of the National Labor Relations Board, I have prepared petition to revoke subpoena in form similar to petition filed by David R. Richards, attorney for John Vickers in said case.

I have endeavored to set forth the reasons why such subpoena should be either revoked or modified whereby I could answer sworn, written interrogatories and cross-interrogatories with respect to information desired by either Russell-Newman Manufacturing Company, Inc. or the Union, thereby avoiding the need of my having to incur the expense of making the trip to Fort Worth and compiling and transporting all of the records required to be produced under such subpoena.

It is my desire to cooperate in every way possible short of incurring onerous and burdensome expense both to myself and to Amedee Frocks, Inc., who are not parties to this suit. I would be happy to supply either or both parties with information regarding our payroll records if they would specify certain at-random weeks

during the designated period and thereby save me the cumbersome job of having to compile and transport all of the records required under the present subpoena.

Your consideration of my request will be sincerely appreciated for the reason that I am much behind in my work since the Legislature just adjourned a week ago. Likewise, I think it would be unfair to both Amedee Frocks, Inc. as well as companies which it represents if it were required to make all records available thereby giving competition information which would be detrimental not only to Amedee Frocks, Inc. but to those companies which it does work for on a contract basis. On the other hand, if the subpoena were limited to at-random records, then such a problem could be obviated.

Sincerely yours,

/s/ H. Ligarde

MOTION TO REVOKE A SUBPOENA DUCES TECUM

Now comes Honore Ligarde, Secretary-Treasurer of Amedee Frocks, Inc., and pursuant to the rules and regulations of the National Labor Relations Board, files his Motion to Revoke a Subpoena duces tecum heretofore served upon him (a copy of which is appended hereto) for the reasons that:

1. Amedee Frocks, Inc. is not a party to the dispute between Russell-Newman Manufacturing Co., Inc. and International Ladies' Garment Workers' Union, AFL-CIO in Case No. 16-CA-2318 and said subpoena seeks to obtain the production of bookkeeping records and materials and information which are confidential to the business of the said Amedee Frocks, Inc.; that the disclosure of such bookkeeping records and information to competitors of Amedee Frocks, Inc. and competitors of companies for which Amedee Frocks, Inc. does work on a contract basis would result in irreparable harm and damage to

the business of Amedee Frocks, Inc. without redress against Russell-Newman Manufacturing Co., Inc. or International Ladies' Garment Workers' Union, AFL-CIO, parties in the above entitled and numbered case;

2. Said subpoena is too broad and too general in its application so as to be unduly onerous and oppressive in that it requires the production of all payroll records for a long, extended period of time and that in order to comply with such subpoena, Amedee Frocks, Inc., who is not a party to such dispute, will be required to incur unwarranted and burdensome expenses in the compilation of such records and the transportation of same to Fort Worth, Texas, as required by such subpoena, and to the knowledge of petitioner, neither Russell-Newman Manufacturing Co., Inc. nor International Ladies' Garment Workers' Union, AFL-CIO have offered or tendered to defray such expenses or to reimburse Amedee Frocks, Inc. for any expenses incurred by it in the compilation, production and transportation of such payroll records;

3. That petitioner is a member of the 59th Legislature of the State of Texas and that because of such Legislature having been in session until May 31, 1965, petitioner has a number of business obligations which require his immediate attention and to require him to appear in Fort Worth, Texas, as required by such subpoena, would result in undue hardship and expense on both Amedee Frocks, Inc. and petitioner without compensation for loss of time and expense on the part of both Amedee Frocks, Inc. and petitioner;

4. That said subpoena was not served in accordance with and as required by the rules and regulations of the National Labor Relations Board;

5. That there was no tender of necessary witness fee or mileage allowance accompanying the subpoena.

WHEREFORE, PREMISES CONSIDERED, your petitioner prays that subpoena heretofore issued be quashed and in the alternative, if same is not quashed, that said subpoena be modified to require petitioner to answer interrogatories and cross-interrogatories as may be submitted by the parties to such a case without the need of petitioner having to make the trip to Fort Worth and that said subpoena be further modified to require the production of a limited number of at-random weekly payroll records of the employees as may be designated by the National Labor Relations Board of the United States of America.

Respectfully submitted,

/s/ Honore Ligarde
for himself and for
AMEDEE FROCKS, INC.

EXHIBIT A to
GC EX. 2(j)

SUBPENA DUCES TECUM

To: Mr. Honore Ligarde of Amedee Frocks, Inc.

307 Market Street, Laredo, Texas

Request therefor having been duly made by: Russell-Newman Manufacturing Company, Inc. whose address is Denton, Texas
YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE
A Trial Examiner of the National Labor Relations Board, at the hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the City of Fort Worth, Texas on the 9th day of June, 1965, at 10 o'clock a.m. of that day, to testify in the Matter of Russell-Newman Manufacturing Co., Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents: The current collective bargaining contract in existence between Amedee Frocks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO, and also the contract which was in effect immediately preceding the current contract between the above parties, along with all payroll records of the employees covered by the above said contracts, such payroll records to be for the period from the date of execution of the contract prior to the current contract to date.

In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand and authorized the issuance hereof. Issued at Fort Worth, Texas this 31st day of May, 1965.

B-55105
(NLRB Seal)

/s/ John H. Fanning

GC EXHIBIT 2(k)

**ORDER REFERRING MOTION TO REVOKE A
SUBPOENA DUCES TECUM TO TRIAL EXAMINER FOR RULING**

On June 11, 1965, Honore Ligarde and Amedee Frocks, Inc., filed with the undersigned Director a Motion to Revoke a Subpoena Duces Tecum issued in the above entitled matter.

IT IS HEREBY ORDERED, pursuant to Section 102.31 of the Board's Rules and Regulations, Series 8, as amended, that this Motion be, and hereby is referred to the Trial Examiner for ruling.

DATED at Fort Worth, Texas, this 11th day of June, 1965.

/s/ Elmer Davis
Regional Director, NLRB

* * *

GC EXHIBIT 2(m)

**RESPONSE TO PETITION TO REVOKE SUBPENA
RE VICKERS**

TO THE HONORABLE TRIAL EXAMINER:

Comes now, RUSSELL-NEWMAN MANUFACTURING CO., INC., Respondent in the above styled and numbered cause and files this its Response to Petition to Revoke Subpena filed on behalf of the witness, JOHN VICKERS, manager, International Ladies' Garment Workers' Union, AFL-CIO, the charging party herein and would show:

1.

In paragraph 3 of his said Petition to Revoke the witness Vickers asserts that the documents are irrelevant, immaterial and incompetent. The pleadings in this matter have joined issue as to whether or not the charging party made and published false representations concerning the specific documents named in the Vickers subpoena. Respondent has, primarily through the efforts of General Counsel, been denied all other means of available discovery to obtain authentic copies of said

documents. The very documents whose specific terms are in issue are obviously relevant, material and competent, and the witness Vickers' plea in said paragraph is a sham and frivolous, and Respondent prays that it be stricken for that reason.

2.

In said Petition to Revoke the witness, Vickers, alleges in paragraph 2 that he "was not served in the manner prescribed by the rules and regulations of the National Labor Relations Board", but fails to point out in what particular he was not so served. Attached hereto as Exhibit "A" is a copy of registered letter dated May 27, 1965, together with Post Office Department registered receipt No. 90489 showing it was received by witness Vickers on June 2, 1965. If there be any defect in the service Respondent will correct the same before hearing, if the same be required.

3.

In said Petition to Revoke the witness, Vickers alleges in paragraph 3 that he has not been tendered the necessary witness fee and mileage allowance. The applicable Rules and Regulations of the National Labor Relations Board provide that Respondent shall pay witness fees and mileage allowance to those witnesses subpoenaed by it, but do not require the tender of such sums in advance. However, if the Trial Examiner should find that such sums should be tendered in advance, Respondent will do so.

4.

In said Petition to Revoke the witness, Vickers, alleges in paragraph 4 that the subpoena is "oppressive and burdensome", but does not allege in what particular it is "oppressive and burdensome", therefore, said plea is insufficient to support a petition to revoke.

5.

The Regional Director's Order referring the witness Vickers' Petition to Revoke to the Trial Examiner for ruling states that said Petition to Revoke was filed with the Regional Director on June 9, 1965.

Exhibit "A" hereto shows that said subpoena was served on Vickers on June 2, 1965. The Petition to Revoke not having been filed within five (5) days of the service of the subpoena duces tecum, must be overruled as a tardy filing. Section 11 (1), Labor Management Relations Act, as amended, and Section 102.31 (b) of the Rules and Regulations of the NLRB, series 8, as amended.

WHEREFORE, PREMISES CONSIDERED, Respondent prays that said "Petition to Revoke Subpena" be denied.

Respectfully submitted,
 LYNE, BLANCHETTE, SMITH & SHELTON
 By: /s/ Fritz L. Lyne

ATTORNEYS FOR RESPONDENT
 RUSSELL-NEWMAN MANUFACTURING CO., INC.

[Certificate of Service]

EXHIBIT A to
 GC EX. 2(m)

Post Office Department
 Official Business

Penalty for private use to avoid
 payment of postage, \$300

INSTRUCTIONS: * * *

RETURN
 TO

Registered No.

Name of Sender

90489

Hurge C. Dunlap

Certified No.

Street and No. or P.O. Box
 4000 First Nat'l Bank Bldg.

Insured No.

City, State and Zip Code
 Dallas, Texas 75202

Vickers

INSTRUCTIONS TO DELIVERING EMPLOYEE

* * *

* * *

RECEIPT

Signature or Name of Addressee: I. L. G. W. U.

Signature of Addressee's Agent, if any: Josephine Munz

Date Delivered

Show Where Delivered

JUN 2, 1965

GC EXHIBIT 2(n)

**RESPONSE TO PETITION TO REVOKE SUBPENA
DUCES TECUM RE DAVIS**

TO THE HONORABLE TRIAL EXAMINER:

Comes now, RUSSELL-NEWMAN MANUFACTURING CO., INC., Respondent in the above styled and numbered cause and files this its Response to General Counsel's "Petition to Revoke Subpena Duces Tecum" re Elmer Davis dated June 7, 1965, and would show the following:

1.

In paragraph 1 of his said Petition to Revoke the witness, Davis, asserts that the evidence sought by said subpoena is privileged. Governmental privilege may not be invoked by "Petition to Revoke Subpena Duces Tecum". What constitutes governmental privilege and the method of invoking it is fully set forth in United States v. Reynolds, (1953) 345 US 1, 73 S.Ct. 528, 97 L ed 727, 32 ALR2d 382. Witness, Davis has not met the standards set forth in the Reynolds case and thus his contention under this point is without merit.

2.

In paragraph 2 of his said Petition to Revoke the witness Davis asserts that the subpoena was not properly served because no witness fee was tendered as required by the Board's Rules and Regulations, Section 102.66(g); Rule 45, Federal Rules of Civil Procedure and General Shoe Corporation, 122 NLRB 619 FN2.

- (a) The Board's Rules and Regulations, Section 102.66(g) does not require tender of witness fees in advance. In any event, Section 102.32 rather than 102.66(g) is the applicable Board Regulation in this matter. It likewise does not require tender of witness fees in advance.
- (b) General Counsel in this matter has repeatedly argued on other points that the Federal Rules of Civil Procedure do not apply to Board proceedings.

- (c) The foot note relied upon by movevant in General Shoe was based upon Section 102.66(g) of the Board's Rules and Regulations and Rule 45, Federal Rules of Civil Procedure.

Respondent recognizes and agrees that it is liable both for witness fees and mileage for Mr. Davis appearing at this hearing, and if the Trial Examiner so orders will tender them in advance.

3.

In paragraph 3 of his said Petition to Revoke the witness Davis asserts that the documents are irrelevant, immaterial and incompetent. The pleadings in this matter have joined issue as to whether or not the charging party made and published false representations concerning the specific documents named in the Davis subpoena. Respondent has, primarily through the efforts of General Counsel, been denied all other means of available discovery to obtain authentic copies of said documents. The very documents whose specific terms are in issue are obviously relevant, material and competent, and the witness Davis' plea in said paragraph is a sham and frivolous, and Respondent prays that it be stricken for that reason. In addition, the witness, Davis, in said paragraph alleges that the subpoena should be revoked because Respondent is not entitled to litigate the issues in this case. This matter, previously herein urged by General Counsel in his "Motion for Judgment on the Pleadings", has already been ruled upon by the Trial Examiner adverse to the contention of the witness, Davis.

4.

In paragraph 4 of his said Petition to Revoke the witness, Davis asserts that said subpoena should be revoked because Section 102.118 of the Board's Rules and Regulations provides that he is not required to testify or respond without the written consent of the General Counsel, and that the General Counsel has declined to give such consent. Section 102.118 cannot be applied to exclude or suppress evidence that would be admissible in a Federal District Court. See General

Engineering, Inc. and Harvey Aluminum (Incorporated) vs. NLRB, 341 F2d 367 (U.S. Ct. of App., 9th Cir., 1965) and NLRB v. Capitol Fish Company, 294 F2d 868 (U.S. Ct. of App., 5th Cir., 1961). As said in General Engineering "* * * the Board could not enter an enforceable order if it insists on withholding evidence, which, under the rules of evidence in effect in federal courts, is admissible."

5.

In paragraph 5 of his said Petition to Revoke the witness Davis, asserts that Section 102.118 of the Board's Rules and Regulations renders his testimony and evidence in his possession privileged. If said Section operates to convert otherwise unprivileged evidence to privileged evidence it does so by implication and not expressly, and therefore is invalid in such attempt. Said ground is further without merit for the reasons stated in paragraphs 1 and 4 hereof.

WHEREFORE, PREMISES CONSIDERED, Respondent prays that said "Petition to Revoke Subpena Duces Tecum" be denied.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH & SHELTON

By: Fritz Lyne

* * *

ATTORNEYS FOR RESPONDENT,
RUSSELL - NEWMAN MANUFACTURING CO., INC.

[Certificate of Service]

GC EXHIBIT 2(o)

SUBPENA DUCES TECUM

To: Mr. Bill Klein of Bobbie Brooks, Inc., Cleveland, Ohio
Request therefor having been duly made by Russell-Newman
Manufacturing Company, Inc. whose address is Denton, Texas
YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE
a Trial Examiner of the National Labor Relations Board, at the
hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the
City of Fort Worth, Texas on the 9th day of June, 1965 at 10 o'clock
a.m. of that day, to testify in the Matter of Russell-Newman
Manufacturing Co., Inc. and the International Ladies' Garment
Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at
said time and place the following books, records, correspondence,
and documents: The current collective bargaining contract in
existence between Bobbie Brooks, Inc., and the International Ladies'
Garment Workers' Union, AFL-CIO, covering the operations of the
subsidiaries of Bobbie Brooks, Inc. located in West Helena and
Lepanto, Arkansas, and also the contract which was in effect im-
mediately preceding the current contract in regard to the above opera-
tions and between the above parties, along with all payroll records of
the employees covered by the above said contracts, such payroll
records to be for the period from the date of execution of the contract
prior to the current contract to date.

In testimony whereof, the seal of the National Labor
Relations Board is affixed hereto, and the undersigned, a
member of said National Labor Relations Board, has hereunto
set his hand and authorized the issuance hereof. Issued at
Fort Worth, Texas this 31st day of May, 1965.

B-55102

/s/ John H. Fanning

[NLRB SEAL]

GC EXHIBIT 2(p)

LYNE, BLANCHETTE, SMITH & SHELTON
Attorneys at Law

* * *

* * *

June 11, 1965

Honorable Elmer Davis
Regional Director
Sixteenth Region
National Labor Relations Board
Sixth Floor, Meacham Building
110 West Fifth Street
Fort Worth, Texas 76102

Re: Russell-Newman Mfg.
Co., Inc. and
International Ladies
Garment Workers' Union,
AFL-CIO
Case No. 16-CA-2318

Dear Mr. Davis:

We are in receipt from Mr. Honore Ligarde on behalf of himself and Amedee Frocks, Inc. a Motion to Revoke Subpena Duces Tecum. I have this day talked by telephone with Mr. Ligarde and am authorized to advise you that in consideration of our not insisting upon payroll records being produced under said Subpoena Duces Tecum, Mr. Ligarde will not otherwise insist upon his said Motion to Repeal Subpoena Duces Tecum. As you will note, a copy of this letter is being sent to Mr. Ligarde.

Yours very truly,

/s/ Fritz Lyne
LYNE, BLANCHETTE, SMITH
& SHELTON

GC EXHIBIT 2(q)

**LAW OFFICES
LEON D. MILLER**

June 10, 1965

**Regional Director
16th Region
National Labor Relations Board
Meachem Building
110 West 5th Street
Fort Worth, Texas**

**Re: Russell-Newman Manufacturing Company
and International Ladies' Garment Workers
Union AFL-CIO - Case No. 16-CA-2318**

Dear Sir:

I represent Lily Lynn, Inc. of New Bedford, Massachusetts.

Pursuant to Rule 102.31 of the Board's Rules and Regulations, my client, Lily Lynn, Inc., hereby petitions to revoke the Subpoena Duces Tecum forwarded to my client by letter dated May 31, 1965 and signed by George C. Dunlap, Esq. of Lyne, Blanchette, Smith & Shelton, attorneys for Russell-Newman Manufacturing Company, Inc. The above subpoena calls for information and material which appear to be irrelevant to the above case now pending before the Board. In addition thereto, compliance with the above subpoena will cause tremendous hardship to my client, for it entails travel of more than 4,000 miles to and from the hearing and the expenditure of additional time and effort, all to no seeming purpose.

I also wish to point out the fact that there has been no tender made of witness fees or mileage fees or other items now required by law. As a result thereof, in my opinion, my client is not required to attend the above hearing.

Very truly yours,

/s/ Leon D. Miller

GC EXHIBIT 2(r)

**ORDER REFERRING DOCUMENTS TO REVOKE
SUBPOENA DUCES TECUM TO TRIAL EXAMINER FOR RULING**

On June 14, 1965, Lily Lynn, Inc., filed with the undersigned a letter purporting to be a Petition to Revoke Subpoena Duces Tecum which letter did not include a copy of the said subpoena.

On June 14, 1965, a letter dated June 11, 1965, was received which referred to a Motion to Revoke Subpoena heretofore referred to the Trial Examiner for ruling.

On June 15, 1965, Bill Klein of Bobbie Brooks, Inc., filed with the undersigned a Subpoena Duces Tecum addressed to Bill Klein of Bobbie Brooks, Inc., and concerning which Bill Klein of Bobbie Brooks, Inc., has heretofore filed a petition to revoke.

IT IS HEREBY ORDERED, pursuant to Section 102.31 of the Board's Rules and Regulations, Series 8, as amended, that these documents be, and they hereby are, referred to the Trial Examiner for ruling.

DATED at Fort Worth, Texas, this 15th day of June 1965.

/s/ Elmer Davis,
Regional Director, NLRB

* * *

**MOTION TO REVOKE A SUBPOENA
DUCES TECUM**

Now comes Carlos Gonzalez, Manager of Laredo Manufacturing Company, and pursuant to the rules and regulations of the National Labor Relations Board, files his Motion to Revoke a Subpoena duces tecum heretofore served upon him (a copy of which is appended hereto) for the reasons that:

1. Laredo Manufacturing Company is not a party to the dispute between Russell-Newman Manufacturing Co., Inc. and International Ladies' Garment Workers' Union, AFL-CIO in Case No. 16-CA-2318 and said subpoena seeks to obtain the production of bookkeeping records and materials and information which are confidential to the business of the said Laredo Manufacturing Company; that the disclosure of such bookkeeping records and information to competitors of Laredo Manufacturing Company and competitors of companies for which Laredo Manufacturing Company does work on a contract basis would result in irreparable harm and damage to the business of Laredo Manufacturing Company without redress against Russell-Newman Manufacturing Co., Inc. or International Ladies' Garment Workers' Union, AFL-CIO, parties in the above entitled and numbered cause;
2. Said subpoena is too broad and too general in its application so as to be unduly onerous and oppressive in that it requires the production of all payroll records for a long, extended period of time and that in order to comply with such subpoena, Laredo Manufacturing Company, who is not a party to such dispute, will be required to incur unwarranted and burdensome expenses in the compilation of such records and the transportation of same to Fort Worth, Texas, as required by such subpoena, and to the knowledge of petitioner,

neither Russell-Newman Manufacturing Co., Inc. nor International Ladies' Garment Workers' Union, AFL-CIO, have offered or tendered to defray such expenses or to reimburse Laredo Manufacturing Company for any expenses incurred by it in the compilation, production and transportation of such payroll records;

3. That because of the nature of the business of Laredo Manufacturing Company, petitioner, as manager of said company and being directly in charge of production, is vitally needed at all times while the plant is in operation, especially during the months of June and July for the reason that the plant is at peak production and is having to work overtime in order to make timely deliveries of goods contracted to be sold by such company, and that failure to make such deliveries because of the absence of petitioner, who is the only person qualified to schedule production work, would not only result in failure to make timely deliveries, but would result in the return of merchandise and loss of valuable customers, thereby creating an undue hardship on Laredo Manufacturing Company without compensation for loss of sales, as well as loss of customers and the loss of time and expense on both the part of Laredo Manufacturing Company and petitioner without adequate remedy or redress against Russell-Newman Manufacturing Co., Inc. and International Ladies' Garment Workers' Union, AFL-CIO;
4. That said subpoena was not served in accordance with and as required by the rules and regulations of the National Labor Relations Board;
5. That there was no tender of necessary witness fee or mileage allowance accompanying the subpoena.

WHEREFORE, PREMISES CONSIDERED, your petitioner prays that subpoena heretofore issued be revoked in its entirety and in the

alternative, if same is not revoked, that said subpoena be modified to require some other employee of Laredo Manufacturing Company to make such trip to Fort Worth, and that said subpoena be further modified to require the production of only a limited number of at-random weekly payroll records of employees selected at-random as may be required by the National Labor Relations Board of the United States of America.

Respectfully submitted,

/s/ Carlos Gonzalez
CARLOS GONZALEZ, for himself
and for LAREDO MANUFACTUR-
ING COMPANY.

Attachment to GC EXHIBIT NO. 2(t)

SUBPENA DUCES TECUM

To — Mr. Carlos Gonzalez of the
Laredo Mfg. Company, Inc., Laredo, Texas

Request therefor having been duly made by Russell-Newman Manufacturing Company, Inc., whose address is Denton, Texas, YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a trial examiner of the National Labor Relations Board, at the hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the City of Fort Worth, Texas, on the 9th day of June, 1965, at 10 o'clock a.m. of that day, to testify in the Matter of Russell-Newman Manufacturing Co., Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents: The current collective bargaining contract in existence between Laredo Manufacturing Company, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO, and also the contract which was in

effect immediately preceding the current contract between the above parties, along with all payroll records of the employees covered by the above said contracts, such payroll records to be for the period from July, 1961 to date.

In testimony whereof, the seal of the National Labor
B-55103 Relations Board is affixed hereto, and the undersigned, a
member of said National Labor Relations Board, has here-
unto set his hand and authorized the issuance hereof.

[SEAL] Issued at Fort Worth, Texas this 31st day of May, 1965.

/s/ John H. Fanning

GC EXHIBIT NO. 2(u)

**ORDER REFERRING MOTION TO REVOKE
SUBPOENA DUCES TECUM TO
TRIAL EXAMINER FOR RULING**

On June 21, 1965, Carlos Gonzalez filed with the undersigned Director a Motion to Revoke Subpoena Duces Tecum issued in the above-entitled matter.

IT IS HEREBY ORDERED, pursuant to Section 102.31 of the Board's Rules and Regulations, Series 8, as amended, that this Motion be, and hereby is, referred to the Trial Examiner for ruling.

DATED at Fort Worth, Texas, this 21st day of June, 1965.

/s/ Elmer Davis
Regional Director, National Labor
Relations Board, Sixteenth Region
Sixth Floor, Meacham Building
110 West Fifth Street
Fort Worth, Texas 76102

GC EXHIBIT NO. 2(w)

ORDER REVOKING SUBPENAS

Motions to revoke subpoenas duces tecum having been duly filed by Carlos Gonzalez on June 21, 1965, by counsel for Bill Klein of Bobbie Brooks, Inc., on June 7, 1965, and by counsel for Herman L. Bishins of Lily Lynn, Inc., on June 14, 1965, and it appearing that the materials called for in the subpoenas duces tecum will be made available by other sources at the hearing, it is hereby

ORDERED, that the several motions to revoke should be, and the same hereby are, granted.

/s/ Frederick U. Reel
Trial Examiner

Dated: September 21, 1965.

GC EXHIBIT NO. 3
and
GC EXHIBIT NO. 4

[This Exhibit appears at JA 183]

GC EXHIBIT NO. 5

[This Exhibit appears at JA 184]

GC EXHIBIT NO. 6
and
GC EXHIBIT NO. 7

[This Exhibit appears at JA 185]

GC EXHIBIT NO. 8
and
GC EXHIBIT NO. 9

[This Exhibit appears at JA 187]

GC EXHIBIT NO. 10

[This Exhibit appears at JA 188]

GC EXHIBIT NO. 11

[This Exhibit appears at JA 189]

GC EXHIBIT NO. 12

[This Exhibit appears at JA 240]
Attached to GC Exhibit No. 1(22)

May 17, 1965

Russell-Newman Manufacturing Company
Denton Plant
Denton, Texas

Attention: Mr. Frank Martino

Dear Mr. Martino:

This letter is written on behalf of the International Ladies Garment Workers Union, AFL-CIO. In keeping with our earlier correspondence this letter constitutes a renewed request for bargaining regarding wages, hours, terms and conditions for employment of the employees in your company's Denton, Texas, operations.

Additionally, this letter is written to protest the recurring movement of both equipment, machines, and production work from Denton to your company's other plants. This continued transfer of work, and potential work, is adversely affecting and will adversely affect in the future the employees in the Denton bargaining unit. The union would like the opportunity to discuss with your representatives this transfer of equipment and production work and the possible effect this may have on the employees in the bargaining unit.

Further, this letter is to request the opportunity to inspect the production records maintained on the Denton, Texas, operation. In the past your company has indicated a reliance upon these records in determining wage increases and other terms and conditions of employment. For this reason and for the further reason that there is present indication of an attempt by your company to deflate the production figures for the Denton employees and inflate the production records for your other plants, thereby putting the Denton plant in an unfavorable comparative position to the other plants.

Exhibit "A"

In order to ascertain the true productive efficiency of the Denton, Texas, plant and in order to determine the accuracy of the charges that these production figures are being manipulated the union would like the opportunity to inspect these production records at some convenient time and place.

In this connection we wish to protest the new practice in Denton of frequent movement of operators from one machine to another and from one assignment to another. This practice varies substantially from the past and of course, has an adverse effect upon the individual's production output. In the event you contemplate relying upon current production figures in determining future wages, hours, or other terms or conditions of employment, please be advised that the union feels that they are presently being arbitrarily depressed in Denton.

We would appreciate your taking into consideration these requests as we feel they are warranted both by the union's obligation as collective bargaining representative and further by the complaints of the employees represented by the union.

We look forward to an early reply.

Sincerely,

MULLINAX, WELLS, MORRIS
& MAUZY

By: /s/ David R. Richards
Attorneys for International Ladies Garment
Workers Union, AFL-
CIO

DRR/sk
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: Mr. Fritz Lyne
 Lyne, Blanchette, Smith & Shelton
 40th Floor First National Bank Building
 Dallas, Texas

Mr. John Vickers
 International Ladies Garment Workers Union
 1000 Main Street
 Dallas, Texas

Mr. Fred Siems
 Vice-President
 International Ladies Garment Workers Union
 110 North 9th Street
 St. Louis 1, Missouri

National Labor Relations Board
 Sixteenth Region
 Sixth Floor - Meacham Building
 110 West Fifth Street
 Fort Worth 2, Texas
 Attention: Elmer Davis

NO. 198204 - RECEIPT FOR CERTIFIED MAIL	
Sent To Russell-Newman Manufacturing Co. Denton Plant Denton, Texas - Frank Martino * * *	Postmark Or Date

Post Office Department Official Business drr-russell newman	
[Postmarked - Denton, Texas May 20, 1965 #9942]	
Registered No.	Name of Sender Mullinax, Wells, Morris & Manzy 1601 National Bankers Life Bldg., Dallas 1, Texas
Certified No. 198204	
Insured No.	

GC EXHIBIT NO. 14

LYNE, BLANCHETTE, SMITH & SHELTON
ATTORNEYS AT LAW
40th Floor First National Bank Building
DALLAS, TEXAS 75202

* * *

* * *

May 19, 1965

Mr. David R. Richards
Attorney at Law
1601 National Bankers Life Bldg.
Dallas, Texas

Re: Russell-Newman Manufacturing Co., Inc. and
International Ladies' Garment Workers, AFL-CIO
Case No. 16-RC-3714

Dear Mr. Richards:

Your letter to Mr. Frank Martino of Russell-Newman Manufacturing Co., Inc. dated May 17, 1965, has been referred to us for answer. In your letter of May 17, 1965 you make certain "protests" and also certain requests concerning inspection of our production records.

You are well aware of our position and the position of our client on this matter. We are well aware that the reason for these continued letters setting out demands and requests is simply to manufacture evidence for later hearings which may be held. However, I will reiterate once again that our position is and remains as was set out to you in my April 12, 1965 letter.

Therefore, your requests and protests as set out in your May 17, 1965 letter are rejected.

Kindest personal regards.

Yours very truly,

/s/ George C. Dunlap

GCD:cc

cc: Mr. Frank Martino
Russell-Newman Manufacturing Co., Inc.
Denton, Texas

Exhibit "B"

RESPONDENT'S EXHIBIT NO. 1

[This Exhibit appears at JA 36]

RESPONDENT'S EXHIBIT NO. 2

[This Exhibit appears at JA 37]

RESPONDENT'S EXHIBIT NO. 3

[This Exhibit appears at JA 41, 42]

EXCERPTS FROM RESPONDENT'S EXHIBIT 4

AGREEMENT

THIS CONTRACT AND AGREEMENT, made and entered into this 19th day of February, 1962, by and between NARDIS SPORTSWEAR, a co-partnership, composed of Bernard L. Gold, Shirley Hendel and Hilbert Hendel, as Co-Trustees of the Alvin Jerome Gold Trust, and Shirley Hendel and Hilbert Hendel, as Co-Trustees of the Richard Stephan Gold Trust, successors to Nardis Sportswear, Inc., hereinafter called "Employer," and the INTERNATIONAL LADIES' GARMENT WORKERS' UNION, an affiliate of AFL-CIO, and LOCAL 348, of INTERNATIONAL LADIES' GARMENT WORKERS' UNION, hereinafter referred to collectively as the "Union,"

W I T N E S S E T H :

WHEREAS, the Employer represents that it is engaged in the making of ladies' garments; and,

WHEREAS, the workers employed by the ~~Employed by the~~ Employer have duly designated the Union as their exclusive bargaining representative for the purpose of collective bargaining with the Employer with respect to rates of pay, wages, hours and other conditions of employment; and,

WHEREAS, the parties desire to cooperate in establishing conditions which will secure a living wage, improved working conditions and fair competition insofar as labor cost is concerned, and to provide methods for a fair and peaceful adjustment of all disputes that may arise between the parties:

NOW, THEREFORE, in consideration of the mutual promises and obligations herein assumed and contained and other good and valuable considerations, the parties agree as follows:

ARTICLE I

Mutual Obligations

It is mutually recognized that the primary objective of the Employer

in entering into this agreement with the Union is the promotion of orderly and peaceful relations with its employees and the achievement of efficiency and uninterrupted production in its shop or shops. This agreement sets forth the rights and obligations of each party to the other party. It establishes a foundation for the demonstration of a mutually cooperative spirit wherein the parties agree that they have an interest and an obligation in the welfare of the industry in which they are engaged. Each party obligates itself to do everything possible to eliminate needless controversies and to promote economic and industrial harmony, and undertakes in good faith to carry out and comply with the terms of this agreement, both in letter and in spirit.

ARTICLE II

Union Recognition

Section 1. The bargaining unit covered by this agreement consists of production workers engaged in the manufacture of garments, order fillers and packers only in the shipping department, and porters. The bargaining union shall not include officers, executives, designers, superintendents, foremen, supervisors, office employees, mechanics, mechanics' assistant, time study employees, or any other employees not expressly included in this paragraph. The Employer recognizes the Union as the sole and exclusive collective bargaining representative for such workers in respect to rates of pay, wages, hours, and working conditions.

ARTICLE III

Union Membership

Section 1. The Employer will inform the new employees in the bargaining unit of the existence of this contract, and the terms thereof. There shall be no solicitation in the plant of any kind which will interfere with production. An employee is free to join or not to join the union without coercion on the part of either the Employer or the Union. The Union may post notices at or near the time clock in a union bulletin board provided for that purpose.

* * * * *

ARTICLE IX

Wages

Section 1. The Employer and the Union agree that the following minimum rates of pay will apply to all employees:

Effective January 2, 1962, the minimum hourly rate for all employees covered by this agreement shall be \$1.30 per hour. Effective September 3, 1963, the minimum hourly rate for all employees covered by this agreement shall be \$1.35 per hour. Effective April 1, 1964, the minimum hourly rate for all employees covered by this agreement shall be \$1.40 per hour.

Section 2. Effective January 2, 1962, the following hourly rates for time workers shall apply to the classifications listed below:

A. Cutting room wages are to be increased as follows: Marker A from \$2.57 1/2 to \$2.67 1/2 per hour. Marker B from \$2.36 1/2 to \$2.46 1/2 per hour. Cutters from \$2.16 to \$2.26 per hour. Trim cutter from \$1.84 to \$1.94 per hour. Experienced spreaders from \$1.54 1/2 to \$1.62 per hour. Inexperienced spreaders presently employed would get an increase of 7 1/2¢ an hour.

B. Examiners' and thread clippers' wages shall be increased from \$1.26 to \$1.31 per hour.

C. Experienced single needle utility operators shall receive a minimum of \$1.50 an hour.

D. Effective January 2, 1962 all other time workers covered by this agreement, not expressly covered by the above classification schedules, shall receive a wage increase of five (5¢) cents per hour, but in no event less than the minimum hourly rate set forth in Section 1 of this Article.

Section 3. The following rates and conditions shall apply to all piece workers:

A. Effective January 2, 1962 all piece workers shall receive an increase of five cents (5¢) per hour. This increase shall be added to the weekly earnings of each piece worker and shall be listed separately on the employee's paycheck stub.

B. Piece rates shall be set to enable the worker of average skill and ability to earn not less than the average demonstrated earnings of the workers in each classification in each section. Piece rates shall include all applicable wage increases provided by prior agreements, but shall not include the increases provided in this agreement in Article IX, Section 3A. The Employer will set piece rates in accordance with this Section. The Union must be notified in writing when piece rate reductions are being considered. No reduction in piece rates will be made without prior consultation with the Union. A dispute regarding piece rates shall be adjusted in accordance with the grievance procedure provided by this agreement.

C. The piece rates for any given item must be set as promptly as possible. If the setting of piece rates has been unduly delayed by the Employer, workers shall not be required to work on garments for which the piece rates have not been finally settled unless the Union directs otherwise.

D. No employee shall suffer any loss of wages because of repairs or other causes beyond his control. A piece worker shall receive her regular rate while working on small cuts in accordance with the present practice.

Section 4. The Employer may grant merit, length of service, or other individual increases or adjustments only upon written notice to the Union and by approval of the Union. The Union agrees that it will not unreasonably withhold approval.

ARTICLE X

Discharge and Discipline

Section 1. No worker shall be discharged or otherwise disciplined without good and sufficient cause. Disputes regarding discharge or discipline shall be disposed of in the same manner as hereinafter provided for the adjustment of any grievance. Written notice shall be given to the Union when a worker is discharged or otherwise disciplined but the notice need not contain the reason therefor.

ARTICLE XI

Distribution of Work

Section 1. The Employer agrees to distribute work among its employees on an equitable and equal basis in an attempt to afford every employee equal earning opportunity.

Section 2. No member of management or supervisory employee shall perform any work covered by this contract unless by agreement of the Union. The Union will not unreasonably withhold agreement.

ARTICLE XII

Chairlady--Shop Committee

Section 1. There shall be a shop chairlady and committee appointed by the Union. The chairlady and the committee shall have the responsibility of presenting employee grievances and complaints to the proper representatives of the Employer. Conferences between the Employer and the Union shall be held at times mutually convenient to both parties. In the event such meetings are held during the working hours, full hourly wages shall be paid to all participating committee members for time lost in such conferences.

* * * * *

ARTICLE XV

Holidays

Section 1. The following holidays shall be observed and all employees shall be paid for them regardless of whether such holidays fall on a working or non-working day of the week or in any non-working week:

New Year
July 4th
Labor Day
Thanksgiving Day
Christmas Day

To be eligible for holiday pay, an employee must be available for work on his regular scheduled work day preceding a holiday and his regular scheduled work day following the holiday, provided work is available.

If work is not available on such days, the employee must work on at least one day in the week of the holiday, the week preceding the holiday week or the week after the holiday week to be eligible for holiday pay. For purposes of this clause, it is agreed that in case of indefinite lay off in excess of one week, the employee shall be given reasonable advance notice to return to work.

Section 2. Holiday pay for time workers shall be computed on the basis of the current hourly rate of pay for the individual worker at the time of the holiday. Holiday pay for piece workers shall be computed on the basis of the individual worker's average straight time pay, averaged over the full calendar quarter immediately prior to the holiday.

Section 3. If work is performed on a holiday, holiday pay shall be paid in addition to regular pay.

* * * * *

ARTICLE XX

Sanitation, Individual Agreements

Section 1. The Employer shall maintain proper sanitation and ventilation standards in its shop or shops at all times, and shall comply with all laws relating thereto. The shop chairlady and committee will cooperate in enforcing this provision.

Section 2. The Employer shall not enter into individual agreements with any of its workers in conflict with this contract.

Section 3. There shall be no sub-contracting by or with any employee in the shop.

ARTICLE XXI

Vacations

Section 1. The object of establishing the Vacation Plan hereinafter set forth is to provide the workers with diversion and rest from steady continuity of work and to contribute to their health and welfare.

Section 2. It is the desire and intention of the parties that eligible employees receive and enjoy annually the benefits of paid vacations. Employees are therefore expected not to accept other employment during such

vacation periods, otherwise the actual purpose of this vacation plan will be defeated. Acceptance by an employee of work elsewhere during a vacation shall terminate his or her employment status with the Employer at the discretion of the Employer.

Section 3. The Employer agrees to grant one (1) week's annual vacation with pay based upon the individual time worker's regular rate, as defined in Article XVI, Section 1. The same rule shall apply to piece workers and shall be based upon their regular rate as defined in Article XVI, Section 1. The one (1) week's vacation shall apply to all workers who as of May 1st of any calendar year during which this Agreement is in effect have at least one (1) year's service with the Employer immediately prior to such date. All workers who as of the same date have at least five (5) years' service with the Employer shall receive two (2) weeks' vacation with pay figured on the same basis as above set forth.

Section 4. The vacation periods shall be determined by the Employer at times between May 1st and June 30th of each year.

Section 5. Annually the Employer and the Union representatives shall meet thirty (30) days prior to the vacation period to determine the eligibility of workers to receive their vacations.

Section 6. It is agreed that if an employee is absent from work for the reason or reasons shown below and for a time not exceeding that attributable to the particular category, such absence from work shall not affect the employee's right to receive a vacation period granted such employee under this Agreement.

Voluntary absence
Fifteen (15) working days.

Personal illness
Thirty (30) working days.

Family illness (Child, Husband, Parent)
Five (5) working days.

Pregnancy (following one year consecutive employment)
Three (3) months.

Any illness above specified must be supported by satisfactory proof furnished by the employee. Any employee eligible for a two weeks' vacation period with pay shall lose one such week if she has exceeded the time allowance in any one of the above classifications. Should such employee exceed the time allowance in two of the classifications, such employee shall not be entitled to any vacation pay. Furthermore, should such employee be absent in any one of the above classifications for double the time set forth above, such employee shall not be entitled to any vacation pay. Furthermore, should such employee be absent in any one of the above classifications for double the time set forth above, such employee shall not be entitled to full vacation pay but shall receive only a pro-rata part thereof in direct ratio to the amount of time missed in accordance with this Section 6. Should the employee lose time from work for one of the reasons above stated and should it later be determined that the reason did not exist but that the employee still took the time off, the Employer will be considered as having grounds for discharge of such employees.

Section 7. If employees are laid off because there is no work available for them while other employees are on vacation, such laid off employees shall not be considered as being on vacation for any purpose, but shall be on layoff status and available for employment elsewhere during such layoff period.

* * * * *

ARTICLE XXXII

Duration

This Agreement shall go into effect as of the 2nd day of January, 1962, and shall continue in effect until the 31st day of December, 1964, and shall thereafter be automatically renewed from year to year unless either party shall notify the other party in writing at least sixty (60) days prior to such expiration date that it desires to change or modify the terms thereof.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and caused this Agreement to be signed by their respective officers on this 19 day of February, 1962.

NARDIS SPORTSWEAR, a co-partnership,
By Ben Gold

INTERNATIONAL LADIES' GARMENT WORKERS
UNION, AFL-CIO, LOWER SOUTHWEST REGION

By Frederick Siems

* * * * *

EXCERPTS FROM RESPONDENT'S EXHIBIT 5

1965 AGREEMENT

NARDIS SPORTSWEAR, INC.

with

TEXAS DISTRICT COUNCIL, ILGWU

THIS CONTRACT AND AGREEMENT, made and entered into this 1st day of January, 1965, by and between NARDIS SPORTSWEAR, a co-partnership, composed of Bernard L. Gold, Alvin Jerome Gold and Richard Stephan Gold, successors to a co-partnership subsisting between Bernard L. Gold, Shirley Hendel and Hilbert Hendel, as Co-Trustees of the Alvin Jerome Gold Trust and Shirley Hendel and Hilbert Hendel, as Co-Trustees of the Richard Stephan Gold Trust, which was a successor to Nardis Sportswear, Inc., hereinafter called "Employer," and TEXAS DISTRICT COUNCIL of International Ladies' Garment Workers' Union, hereafter referred to as the "Union",

WITNESSETH

WHEREAS, the Employer represents that it is engaged in the making of ladies' garments and

WHEREAS, the workers employed by the Employer have duly designated the Union as their exclusive bargaining representative for the purpose

of collective bargaining with the Employer with respect to rates of pay, wages, hours and other conditions of employment; and,

WHEREAS, the parties desire to cooperate in establishing conditions which will secure a living wage, improved working conditions and fair competition insofar as labor cost is concerned, and to provide methods for a fair and peaceful adjustment of all disputes that may arise between the parties:

NOW, THEREFORE, in consideration of the mutual promises and obligations herein assumed and contained and other good and valuable considerations, the parties agree as follows:

* * * * *

ARTICLE II: UNION RECOGNITION

The bargaining unit covered by this agreement consists of production workers engaged in the manufacture of garments, order fillers and packers only in the shipping department, and porters employed by the Employer at Dallas, Texas. The bargaining unit shall not include officers, executives, designers, superintendents, foremen, supervisors, office employees, mechanics, mechanics' assistants, time study employees, or any other employees not expressly included in this paragraph. The Employer recognizes the Union as the sole and exclusive collective bargaining representative for such workers in respect to rates of pay, wages, hours, and working conditions.

* * * * *

ARTICLE VI: HOURS -- OVERTIME

1. The standard work day shall consist of seven (7) regularly scheduled hours.

2. The standard work week shall consist of thirty-five (35) hours per week divided equally into the first five (5) working days (Monday through Friday inclusive).

3. All time worked prior to and after the standard work day and all time worked in excess of the standard work week shall be considered overtime and paid for at the rate of time and one-half the employees'

regular rate. Likewise, all time worked on Saturday shall be considered overtime and shall be paid for at the rate of time and one-half the employees' regular rate. Provided, however, that where an employee has failed to report for work when work was available during the standard work week, the Employer may pay the employee at the regular straight time rate of pay for any overtime which does not exceed time which the employee missed during the standard work week. Premium payments shall not be duplicated for the same hours worked under any of the terms of this section. The Employer agrees to notify the Union directly or through the Shop Chairlady as expeditiously as possible in advance of any overtime work to be performed.

4. Workers shall be at their respective machines when the bell rings at the beginning of the work day; and at the close of the work day, workers shall not leave their machines before the final bell rings.

5. Employees shall not accept other employment on any day when a full day's work is provided in accordance with the terms of this Article.

ARTICLE VII: WAGES AND STANDARDS

1. The minimum rates of pay and wage increases shall be in accordance with "Schedule A" annexed hereto and made a part hereof.

2. Piece rates shall be set on a fair and equitable basis in order that the piece workers of average skill and ability shall have the opportunity to earn a wage above their prevailing minimum.

3. Wages shall be paid regularly on a fixed day according to present custom in the plant.

4. No homework shall be permitted.

5. The Employer shall comply with all standards of sanitation and safety required by law.

6. The Employer shall not charge workers for damage to material unless caused wilfully or through gross negligence provided, however, this shall not affect whatever right the Employer may have to discipline its employees. All repairs on garments due to carelessness of a worker shall be made by such worker and the time required for such repair shall be charged against such worker.

7. The Employer shall initiate piece rates for all garments before manufacturing except for a foreign operation, in which case the Employer will announce the piece rate within five (5) working days of commencing the operation. In the event the rate is questioned the piece rate shall be settled by the Employer and the Shop Committee. All piece rates when finally agreed upon or determined shall be retroactive to the inception of the work. Any dispute regarding prices shall be disposed of in the manner hereinafter provided for the adjustment of disputes.

8. Wages, hours, and conditions of employment as they now exist shall not be reduced by the signing of this agreement; and as hereafter established shall not be reduced during the term of this contract; provided that nothing herein contained shall prevent the Employer from experimenting with and adopting new or changed methods, machines or procedures so long as the same are not in violation of this contract; and provided, further, that nothing herein contained relating to the reduction of hours shall apply to reduction of hours due to slack periods.

9. The Employer may grant merit, length of service, or other individual increases or adjustments only upon written notice to the Union and by approval of the Union. The Union agrees that it will not unreasonably withhold approval.

10. No minor below sixteen (16) years of age shall be employed in the production of garments or parts thereof.

* * * * *

ARTICLE XII: ASSIGNMENT TO OTHER WORK

1. A worker who is requested by the Employer to perform temporarily work other than his regular work while his regular work is available shall receive for such other work not less than his average hourly earnings in his regular work for the preceding completed calendar quarter prior to the change.

2. A worker who is requested to temporarily perform work other than his regular work when his regular work is unavailable and accepts such work shall receive for such other work the established piece rate

therefor, but in no event less than the minimum provided in this Agreement. (In determining whether an employee has received at least the minimum wage for such other work, the wages earned on the other work shall be computed separately from the wages the employee has earned on his regular work during the given work week, hours and earnings on such other work shall not be used in computing the quarterly average for piece workers wherever such average is required by this Agreement).

3. When a worker accepts a permanent transfer to an operation other than a type of operation in which he is experienced, he shall be paid at his "regular rate," computed as set forth in ARTICLE XIV, for a period of at least one hundred forty (140) hours.

ARTICLE XIII: HOLIDAYS

The following holidays shall be observed and all employees, whether time or piece workers shall be paid a full day's straight time pay for them regardless of whether such holidays fall on a working or non-working day of the week or in any non-working week or if any of said holidays fall within an employee's vacation period, the same shall be paid for in addition to the vacation allowance:

New Year's Day
 July 4th
 Labor Day
 Thanksgiving Day
 One-half day preceding Christmas Day
 Christmas Day

provided, however, that:

(a) to be eligible for holiday pay, an employee must report for work on his regular scheduled work day preceding and his regular scheduled work day following the holiday, and

(b) to be eligible for holiday pay, an employee must have completed his trial period with the Employer.

(c) An employee who is on lay-off or verified illness at the time the holiday occurs shall be paid for such holiday when he returns to work provided the lay-off or illness is less than one (1) month in duration and provided, further, that he is eligible under (a) and (b) above. It is

agreed in the case of indefinite lay-off in excess of one week, an employee shall be given reasonable advance notice to return to work.

Holiday pay for each time worker shall be at his prevailing rate of pay and for each piece worker shall be based upon his average hourly earnings in his regular work for the preceding completed calendar quarter.

In the event work is performed on any such holiday, it shall be paid for at the rate of time and one-half in addition to the holiday pay.

* * * * *

ARTICLE XXIV: CHANGE IN LEGAL MINIMUMS

Should new federal or state legislation be enacted further increasing minimum wages under the law, it is agreed that the minimum wage scales specified in the schedules attached hereto shall be adjusted to the end that no minimum wage specified therein for an experienced worker shall be less than Ten Cents (10¢) an hour above the new legal minimum wage for each straight time hour. In the event of a disagreement, the matter shall be treated as a dispute under ARTICLE XXVIII.

* * * * *

ARTICLE XXVI: VACATIONS

1. An employee who, as of May 1, 1965 and each succeeding May 1st during which this agreement is in effect, is in the employ of Employer and has completed the following period of continuous service as herein defined with the Employer prior to such May 1st, shall receive the following vacation with full pay:

3 years' service	-	2 weeks
1 year's service	-	1 week

An employee who on May 1st of the particular year, who is in the employ of the Employer and has completed less than one year's continuous service as herein defined but at least eight (8) months' continuous service as herein defined with the Employer, shall be entitled to a pro rata vacation benefit equal to one-twelfth (1/12) of one week's pay for each month of service from date of hire to May 1.

2. Vacation pay for a piece worker shall be computed on the basis of such worker's average straight time hourly earnings during the year prior to the preceding April 1st, but shall in no event be less than the applicable minimum wage set forth in this agreement. Vacation pay for a time worker shall be computed at such worker's current straight time hourly rate.

3. Any worker who during the vacation period leaves his employment voluntarily or whose employment is terminated involuntarily prior to the distribution of such payment shall then be entitled to receive his vacation pay.

4. Employees who are absent by reason of their own illness, subject to verification, not more than sixty (60) days accumulated in a year's time shall not thereby lose any vacation to which they may be entitled; however, employees who are similarly absent for longer than sixty (60) days shall receive pro-rata vacations. Employees absent for illness are required to notify the Employer as early as possible as to the date of their expected return, but in no event less than twenty-four (24) hours in advance thereof.

The Employer agrees to grant reasonable leaves of absence upon request before or on the first day of absence or as promptly as possible thereafter for good cause (subject to verification), such as illness in the family, or death in the family, and such leaves of absence shall not cause employees to lose any vacation or other benefits to which they may be entitled.

5. All vacations shall be given as determined by the Employer in the period between May 1 and July 31 of each year.

* * * * *

ARTICLE XXXIV: TERM

This agreement shall go into effect as of the 1st day of January 1965, and shall continue in effect through the 31st day of December 1967 and shall thereafter automatically be renewed from year to year unless either party

shall notify the other party in writing at least sixty (60) days prior to any such expiration date that it desires to change or modify the terms thereof.

* * * * *

SCHEDULE "A"
Nardis Sportswear

1. (a) Effective as of and retroactive to January 1, 1965, markers with no less than two (2) years' experience shall be paid not less than \$3.00 per hour.

(b) The minimum hourly rate for markers shall be not less than \$3.00 per hour; however, markers presently employed and now earning less than \$3.00 per hour shall, effective as of and retroactive to January 1, 1965 and annually thereafter, receive an increase of at least but not to exceed 20¢ per hour until they reach the \$3.00 minimum.

2. (a) Effective as of and retroactive to January 1, 1965, cutters with no less than two (2) years' experience shall be paid not less than \$2.70 per hour.

(b) Cutters presently employed and now earning less than \$2.70 per hour shall, effective as of and retroactive to January 1, 1965 and annually thereafter, receive an increase of at least but not to exceed 20¢ per hour until they reach the \$2.70 minimum.

(c) Any fully experienced cutter who is promoted to marker shall immediately upon promotion be paid not less than \$2.70 per hour. After a trial period of three (3) months, a cutter so promoted to a marker shall receive not less than \$2.85 per hour, and at the end of one year from the date he commenced marking he shall receive no less than \$3.00 per hour.

3. (a) Effective as of January 1, 1965 and retroactive thereto, the minimum wage scale for cutter-learners shall be the following:

(b) Any worker without prior experience when employed as an apprentice-cutter (less than two (2) years' experience) shall be paid not less than \$1.50 per hour.

(c) Thereafter such apprentice-cutter shall receive a wage increase after each three (3) months of experience in the industry equal

to one-eighth (1/8) the difference between his hiring rate as an apprentice-cutter and the then basic contract minimum for a skilled cutter.

4. Effective as of and retroactive to January 1, 1965, cloth spreaders shall receive a minimum hourly wage of not less than the following:

\$1.50	- during trial period
\$1.57-1/2	- after trial period
\$1.65	- after six (6) months' experience
\$1.75	- after one (1) year's experience

5. Effective as of the dates set out below, pressers, operators and final inspectors shall receive a minimum wage of not less than the following:

<u>1-1-65</u>	<u>1-1-66</u>	<u>1-1-67</u>	
\$1.35	\$1.35	\$1.40	after trial period
\$1.45	\$1.45	\$1.50	after three (3) months' experience
\$1.50	\$1.55	\$1.60	after six (6) months' experience

6. Effective as of the dates set out below finishers, bundlers, thread clippers and order fillers shall receive a minimum wage of not less than the following:

<u>1-1-65</u>	<u>7-2-66</u>	
\$1.35	\$1.35	after trial period
\$1.42-1/2	\$1.47	after three (3) months' experience
\$1.47-1/2	\$1.55	after six (6) months' experience

7. Effective as of the dates set out below the minimum hourly earnings for all other workers not specifically covered by paragraphs 1 through 6 above, shall be not less than the following:

<u>1-1-65</u>	<u>7-2-66</u>	
\$1.35	\$1.35	after trial period
\$1.42-1/2	\$1.45	after two (2) months' experience
\$1.47-1/2	\$1.50	after three (3) months' experience

8. Effective as of January 1, 1965 and retroactive thereto all workers (time workers (except for cutters and markers) as well as piece workers) shall receive a wage increase of 7-1/2¢ per hour.

(a) Effective as of July 2, 1966, all workers (time workers (except for cutters and markers) as well as piece workers) shall receive a wage increase of 7-1/2¢ per hour over their then wage. Increases received by inspectors on January 1, 1966 pursuant to the increase in

minimum as set forth in paragraph 5 of this Schedule shall be fully credited against the increase effective July 2, 1966 pursuant to this paragraph.

(b) In the case of piece workers, these increases shall be added to the weekly earnings of each piece worker and shall be listed separately on the payroll check stub of the employee.

(c) There shall be no pyramiding of wage increases and increases in the minimum.

EXCERPTS FROM RESPONDENTS EXHIBIT 6

THIS AGREEMENT MADE AND ENTERED INTO AS OF THIS 1st day of January 1961, by and between Laredo Manufacturing Company, located at Laredo, Texas, hereinafter designated as the "Employer", and Local 350 of the International Ladies' Garment Workers' Union, said Local being an unincorporated association and hereinafter designated as the "Union", for and in behalf of itself and the employees now employed or hereafter to be employed by the Employer.

WITNESSETH :

WHEREAS, the Employer represents that it is engaged in the making of children's dresses; and

WHEREAS, the workers employed by the Employer have duly designated the Union as their exclusive bargaining representative for the purpose of collective bargaining with the Employer with respect to rates of pay, wages, hours and other conditions of employment; and

WHEREAS, the parties desire to cooperate in establishing conditions which will tend to secure a living wage, improved working conditions and fair competition insofar as labor cost is concerned, and to provide methods for a fair and peaceful adjustment of all disputes that may arise between the parties;

NOW, THEREFORE, in consideration of the mutual promises and obligations herein assumed and contained and other good and valuable considerations, the parties agree as follows:

ARTICLE I: MUTUAL OBLIGATIONS

The parties agree that this agreement shall be binding upon them and their respective successors and assigns, and that they will faithfully comply with its provisions.

ARTICLE II: UNION RECOGNITION

The bargaining unit covered by this agreement consists of all non-supervisory production, maintenance, packing and shipping workers employed by the Employer. It is agreed that the Union represents a majority of such workers and that it shall be the sole and exclusive bargaining representative for all workers in the bargaining unit during the entire period of this agreement. Neither the Employer nor any of its agents shall directly or indirectly discourage membership in the Union.

* * * * *

ARTICLE V: CHECK-OFF

The Employer agrees to deduct membership dues (which shall be deemed to include periodic fixed dues, initiation fees, and assessments) from the earnings of its employees monthly and transmit the same to the Union or its designee within forty-eight (48) hours thereafter, subject to the requirements of law concerning authorization and assignment by the workers individually. Once a month, the Union representative shall submit a list of those members delinquent in the payment of dues, and the Employer agrees to deduct additional amounts as requested by the Union until the members' obligations in the payment of dues are met. Sums so deducted under this Article by the Employer shall be kept separate and apart from the general funds of the Employer and shall be held in trust by the Employer for the benefit of the Union.

ARTICLE VI: HOURS -- OVERTIME

The standard hours of employment shall be thirty-five (35) hours per week divided equally into the first five (5) working days, Monday

through Friday. For the period from January 1, 1961 through June 30, 1961, the Employer may require the employees to work one (1) additional hour per day, and the employees agree to do so, for straight-time pay. For the period from July 1, 1961 through June 30, 1963, the Employer may require the employees to work one-half (1/2) additional hour per day, and the employees agree to do so, for straight-time pay. However, all work in excess of eight (8) hours in any one day during the period from January 1, 1961 through June 30, 1961, all work in excess of seven and one-half (7-1/2) hours in any one day during the period from July 1, 1961 through June 30, 1963, and all work in excess of seven (7) hours in any one day beginning July 1, 1963 and all work performed on Saturdays of the week in which any of the holidays specified in ARTICLE XIII hereof occur shall be considered overtime and shall be paid for at the rate of time and one-half.

ARTICLE VII: WAGES AND STANDARDS

1. To compensate for the reduction in hours provided above, all time workers and piece workers shall receive a weekly adjustment, over and above their earnings of six (6%) per cent effective July 1, 1961 and an additional six (6%) per cent effective July 1, 1963.

2. Employees shall receive a minimum wage of no less than the following rates computed on a daily basis:

- a) \$1.10 an hour effective January 1, 1961;
- b) \$1.15 an hour effective January 1, 1962.

However, if the federal minimum wage is increased after January 1, 1961 by fifteen (15¢) cents an hour, each of the above minimums shall be increased by ten (10¢) cents an hour on the effective dates provided above (but not prior to the effective date of the increase in the federal minimum wage) and shall be further increased by an additional five (5¢) cents six (6) months after the said ten (10¢) cent increase is effective.

3. All piece rates shall be set so as to enable an employee of average skill and ability to earn a reasonable incentive above the minimum hourly rates specified in this agreement.

4. The Employer shall furnish to the representative of the Union a quarterly list of all piece workers and their average hourly earnings for each quarter of the year.

5. Where changes in conditions occur affecting previously established standards and rates, time and motion studies should be utilized, and if adjustments are necessary, such adjustments will be made. The time and motion standards shall be subject to the inspection and approval of the Union Committee and the Union Representative.

6. The Employer shall not charge workers for damage to material unless caused wilfully.

7. If the settlement of piece rates has been unduly delayed by the Employer, workers shall not be required to work on garments for which the piece rates have not been finally settled unless the Union directs otherwise. When piece rates are settled, such rates shall be retroactive to the inception of the work.

8. Wages, piece rates, standards and other working conditions now existing or hereafter established in the Employer's shop shall not be lowered.

* * * * *

ARTICLE XXXIII: TERM

This agreement shall go into effect as of the 1st day of January, 1961, and shall continue in effect until the 31st day of December 1963.

EXCERPTS FROM RESPONDENT'S EXHIBIT 7

LAREDO MANUFACTURING CO., INC.

with

TEXAS DISTRICT COUNCIL

of the

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

January 1, 1964 to December 31, 1966

* * * * *

THIS AGREEMENT MADE AND ENTERED INTO AS OF THIS
2nd day of Dec., 1964, by and between LAREDO MANUFACTURING CO.,
INC. of Laredo, Texas, a Texas Corporation, hereinafter designated as
the "Employer", and the Texas District Council of the International
Ladies' Garment Workers' Union, AFL-CIO, on behalf of its subordinate
organizations, hereinafter designated as the "Union,"

WITNESSETH:

WHEREAS, the Employer represents that it is engaged in the
making of children's dresses; and

WHEREAS, the workers employed by the Employer have duly
designated the Union as their exclusive bargaining representative for
the purpose of collective bargaining with the Employer with respect to
rates of pay, wages, hours and other conditions of employment; and

WHEREAS, the parties desire to cooperate in establishing condi-
tions which will tend to secure a living wage, improved working condi-
tions and fair competition insofar as labor cost is concerned, and to
provide methods for a fair and peaceful adjustment of all disputes that
may arise between the parties;

NOW, THEREFORE, in consideration of the mutual promises and
obligations herein assumed and contained and other good and valuable
considerations, the parties agree as follows:

* * * * *

ARTICLE II: UNION RECOGNITION

The bargaining unit covered by this agreement consists of all non-
supervisory production, maintenance, packing and shipping workers
employed by the Employer. ***

* * * * *

ARTICLE IV: TRIAL PERIOD

Newly hired experienced workers shall be deemed during their
first thirty (30) calendar days of employment and newly hired inexperienced
workers shall be deemed during their first twelve (12) weeks of employment

to be engaged for a trial period, during which they may be discharged without regard to cause.

* * * * *

ARTICLE XXXVII: TERM

This agreement shall go into effect as of the 1st day of January, 1964, and shall continue in effect until the 31st day of December, 1966.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals, and caused this agreement to be signed by their respective officers the day and year first above written.

LAREDO MANUFACTURING COMPANY, INC.

By _____ L.S.
(Name and Title of Officer)

and

TEXAS DISTRICT COUNCIL of the INTER-
NATIONAL LADIES' GARMENT WORKERS'
UNION, AFL-CIO

By _____ L.S.
(Name and Title of Officer)

SCHEDULE "A"

A. Minimum Wages

1. Effective as of July 6, 1964 the minimum wage for all workers shall be no less than the following:

\$1.25 per hour	during trial period
\$1.30 per hour	after trial period
\$1.35 per hour	after 4 months' experience
\$1.40 per hour	after 6 months' experience

2. Effective as of September 6, 1965 the minimum wage for operators shall be no less than the following:

\$1.25 per hour	during trial period
\$1.35 per hour	after trial period
\$1.45 per hour	after 4 months' experience
\$1.50 per hour	after 6 months' experience

B. Wage Increases

1. Effective July 6, 1964 all time workers shall receive a compensating wage increase to offset the reduction in work hours from thirty-seven and one-half (37-1/2) hours per week to the thirty-five (35) hour work week.

2. Effective July 6, 1964 all piece workers shall receive an increase in piece rates of seven and fourteen one hundredths (7.14%) per cent.

EXCERPTS FROM RESPONDENT'S EXHIBIT 8

ARTICLES OF AGREEMENT

Between

**KABRO OF HOUSTON, INC.
33 ARTESIAN PLACE
HOUSTON 13, TEXAS**

**THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO
AND ITS LOCAL NO. 214**

THIS AGREEMENT made and entered into this 1st day of November, 1960, by and between Kabro of Houston, Inc., of Houston, Texas, hereinafter designated as the "Employer", and International Ladies' Garment Workers' Union AFL-CIO, and its Local 214, hereinafter designated as the "Union", for and on behalf of themselves and the employees now employed or hereafter to be employed by the Employer.

WITNESSETH :

WHEREAS, the Employer represents that it is engaged in the making of one and two piece dresses, sports wear and related items; and

WHEREAS, the workers employed by the Employer have duly designated the Union as their exclusive bargaining representative for the

purpose of collective bargaining with the Employer with respect to rates of pay, wages, hours, and other conditions of Employment; and

WHEREAS, the parties desire to continue to cooperate in establishing conditions which secure a living wage, improved working conditions and to provide methods for a fair and peaceful adjustment of all disputes that may arise between the parties;

NOW, THEREFORE, in consideration of the mutual promises and obligations herein assumed and contained and other good and valuable considerations, the parties agree as follows:

* * * * *

Article II

Union Recognition

The bargaining unit covered by this Agreement consists of all non-supervisory production workers actually engaged in the making of garments. It is agreed that the Union represents a majority of such workers and that it shall be the sole and exclusive bargaining representative for all workers in the bargaining unit during the entire period of this Agreement.

This Agreement excludes and is not intended to cover any employees or officers not actually engaged in the making of garments and does not include officers, executives, designers, superintendents, foremen, floorladies, assistant floorladies, bundle girls, pattern makers, graders, instructors, office, custodial, machinists and maintenance employees, receiving, packing and shipping workers and deliverymen.

* * * * *

Article VII

Wages and Piece Rates

1. The minimum rates of pay and wage increases shall be in accordance with "Schedule A" annexed hereto and made a part hereof.

* * * * *

Article XXVIIIReopening

This Agreement may be reopened on November 1, 1962, by either party by giving sixty (60) days prior written notice to the other party of its desire to negotiate and amend the Agreement as to any or all of the following items, but for no other purpose:

- (a) Severance Pay.
- (b) Reduction of hours in the work week, amending Article VI of this Agreement.
- (c) Increases in the minimum rates of pay, amending Article VII, paragraph 1 and the "Schedule A", Paragraph 1 attached, provided the federal minimum wage at that time exceeds \$1.15 per hour.
- (d) Wages, amending Article VII and Appendix A attached, provided the Consumer Price Index, for Houston, Texas, of the U. S. Department of Labor, Bureau of Labor Statistics has increased four per cent (4%) over the last index published prior to November 1, 1960.

In the event a reopening under this Article XXVIII occurs, it is expressly agreed that Article XXIII of this Agreement shall be in effect, as to any of such items being negotiated.

Article XXIXTERM OF AGREEMENT

This agreement when executed shall be deemed to define the wages, hours, rates of pay and other conditions of employment of the employees covered by this Agreement for the term of this Agreement, and no new or additional issues not included herein or covered hereby shall be the subject of negotiations during the term hereof, except as expressly provided for herein.

This Agreement shall be effective November 1, 1960, and shall remain in force and effect until November 1, 1963, subject to Article XXVIII of this Agreement and shall automatically be renewed from year to year thereafter unless either party shall notify the other party in

writing at least sixty (60) days prior to the expiration date or any anniversary date thereafter of a desire to change or modify the terms of this Agreement.

* * * * *

APPENDIX "A"

1. The Employer agrees that the minimum hourly wage rate of \$1.15 shall be in effect from and after November 1, 1960, except that the minimum rate for cutters with one year's experience in this shop shall be \$1.80 per hour and the minimum rate for spreaders with 6 months' experience in this shop shall be \$1.25 per hour.

2. The Employer agrees to add to the piece work earnings of piece workers each work week, additional amounts, each of which shall be figured separately and each of which shall be based upon the piece work earnings of each individual piece worker:

(a) Sixteen per cent (16%) of such piece work earnings.

(b) For any piece worker whose average hourly earnings based upon the piece work rates, (excluding the sixteen per cent (16%) as provided in (a) above) exceeds, during such work week, the minimum hourly wage rate as provided in this Agreement, he shall also receive during such work week, as an incentive bonus, an additional three per cent (3%).

3. Effective November 1, 1960, all time workers shall receive an across-the-board wage increase of ten cents (10¢) per hour.

EXCERPTS FROM RESPONDENT'S EXHIBIT 9

KABRO OF HOUSTON, INC.

with

TEXAS DISTRICT COUNCIL

of the

INTERNATIONAL LADIES' GARMENT WORKERS' UNION

August 10, 1964 to January 31, 1967

* * * * *

THIS AGREEMENT made and entered into as of this 10th day of August, 1964, by and between KABRO OF HOUSTON, INC., (formerly Lily Lynn of Texas, Inc.) hereinafter designated as the "Employer," and the TEXAS DISTRICT COUNCIL of the International Ladies' Garment Workers' Union, AFL-CIO, on behalf of itself and its subordinate organizations, hereinafter designated as the "Union,"

WITNESSETH :

WHEREAS, the Employer represents that it is engaged in the making of ladies' dresses and sportswear, and related items;

WHEREAS, the workers employed by the Employer have duly designated the Union as their exclusive bargaining representative for the purpose of collective bargaining with the Employer with respect to rates of pay, wages, hours and other conditions of employment; and

WHEREAS, the parties hereto desire to establish conditions that will tend to secure to the workers continuity of employment, and maintain adequate wages and earnings and fair working conditions, to provide methods for an equitable and peaceful adjustment of all grievances and disputes, to secure uninterrupted operation of work, and further desire to cooperate for efficient management in industry; planning for improvement therein, and encouraging and effecting the modernization of production units;

NOW, THEREFORE, in consideration of the mutual promises and obligations herein assumed and contained and other good and valuable considerations, the parties agree as follows:

* * * * *

ARTICLE II: UNION RECOGNITION

The bargaining unit covered by this agreement consists of all non-supervisory employees, actually engaged in the making of garments, and this agreement excludes and is not intended to cover officers, executives, foremen, floorladies, assistant floorladies, pattern makers, graders, instructors, office, custodial, machinists and maintenance employees, shipping clerks, and delivery men. It is agreed that the Union represents a majority of the workers in the bargaining unit set out above and that it

shall be the sole and exclusive bargaining representative for all workers in the bargaining unit during the entire period of this agreement.

* * * * *

ARTICLE IX: WAGES AND STANDARDS

1. The minimum rates of pay and wage increases shall be in accordance with Schedule A annexed hereto and made a part hereof.

* * * * *

ARTICLE XXXV: TERM

This agreement shall go into effect as of the 10th day of August, 1964 and shall continue in effect until the 31st day of January, 1967, and shall thereafter automatically be renewed from year to year unless either party shall notify the other party in writing at least sixty (60) days prior to any such expiration date that it desires to change or modify the terms thereof.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals, and caused this agreement to be signed by their respective officers the day and year first above written.

KABRO OF HOUSTON, INC.,

By _____ L.S.
(Name and Title)

TEXAS DISTRICT COUNCIL, ILGWU

By _____ L.S.
(Manager)

SCHEDULE "A" Kabro of Houston, Inc.

1. (a.) Effective as of August 10, 1964, experienced cutters and markers shall be paid no less than \$2.40 per hour.

(b.) Effective as of the first day of the second pay period in April 1965, experienced cutters and markers shall be paid no less than \$2.50 per hour.

(c.) Effective as of the first day of the second pay period in April 1966, experienced cutters and markers shall be paid no less than \$2.55 per hour.

2. Effective as of August 10, 1964, the minimum wage scale for cutter-learners shall be the following:

(a.) Any worker without prior experience when employed as an apprentice-cutter (less than one year's experience) shall be paid no less than \$1.50 per hour.

(b.) Thereafter, such apprentice-cutter shall receive a wage increase after each three (3) months of experience in the industry equal to one fourth ($1/4$) the difference between his hiring rate as an apprentice-cutter and the then basic contract minimum for a skilled cutter.

3. Effective as of the dates set out below cloth spreaders shall receive a minimum hourly wage of no less than the following:

<u>4/9/64</u>	<u>First day of the second pay period, April 1965</u>	<u>First day of the second pay period April 1966</u>
	\$1.50	\$1.50 after trial period
	\$1.60	\$1.60 after three (3) months experience
\$1.55	\$1.65	\$1.70 after six (6) months experience

4. (a.) Effective as of August 10, 1964, cutters, markers, cloth spreaders shall receive a wage increase of no less than 10¢ per hour.

(b.) Effective as of the first day of the second pay period in April 1965, cutters, markers, and cloth spreaders shall receive a wage increase of no less than 10¢ per hour over their then wage.

(c.) Effective as of the first day of the second pay period in April 1966, cutters, markers, and cloth spreaders shall receive a wage increase of no less than 5¢ per hour over their then wage.

5. Effective as of the dates set out below operators and all other piece workers shall receive a minimum hourly wage of no less than the following:

First day of the second
pay period April 1965

7/1/66

\$1.35	\$1.40	after trial period
\$1.45	\$1.50	after three (3) months experience
\$1.55	\$1.60	after six (6) months experience
\$1.60	\$1.70	after nine (9) months experience

6. Make up pay for piece workers shall not exceed 20¢ per hour above actual earnings, but in no event shall piece workers with nine (9) months or more experience be paid less than \$1.40 per hour from and after August 10, 1964, nor less than \$1.50 per hour after the last day of the first pay period of June 1966.

7. Effective as of the dates set out below final inspectors, floor-girls, and other miscellaneous time workers shall receive a minimum hourly wage of no less than the following:

First day of the second pay
period in April 1965

7/1/66

\$1.30	\$1.30	after trial period
\$1.35	\$1.40	after three (3) months experience
\$1.40	\$1.50	after six (6) months experience

8. (a.) Effective as of August 10, 1964, operators and all other piece workers shall receive a wage increase of no less than six and one half (6-1/2%) percent.

(b.) Effective as of July 1, 1966 operators and all other piece workers shall receive a wage increase of no less than seven (7%) percent of their current wage.

9. (a.) Effective as of August 10, 1964 final inspectors, floorgirls, and other miscellaneous time workers shall receive the same weekly wage rate for 37-1/2 hours of work per week as was previously paid for 40 hours per week.

(b.) Effective as of July 1, 1966 final inspectors, floorgirls, and other miscellaneous time workers shall receive the same weekly wage rate for 35 hours of work as was previously paid for 37-1/2 hours.

SCHEDULE "A"
(Kabro of Houston, Inc.)

Label Prices - Per 1,000)

	<u>CLOTH</u>	<u>PAPER</u> (Series K)	<u>LATEX</u>
Below \$3.75	\$1.25	\$0.80	\$1.15
\$3.76 - \$6.75	\$1.50	\$1.00	\$1.35
\$6.76 - \$10.75	\$2.50	\$1.75	\$2.10
\$10.76 - \$16.75	\$3.50	\$2.25	\$2.60
\$16.76 - \$24.75	\$4.50	\$3.00	\$3.35
\$24.76 - and up	\$6.00	\$4.00	\$4.35

EXCERPTS FROM RESPONDENT'S EXHIBIT 10

THIS AGREEMENT made and entered into as of the 1st day of January, 1963, by and between BOBBIE BROOKS, INC., a corporation, the principal office of which is located at Kelley Avenue, Cleveland, Ohio, for and in behalf of itself, its affiliates and subsidiaries, hereinafter collectively designated as the "Employer" and the INTERNATIONAL LADIES' GARMENT WORKERS' UNION, an unincorporated association, the principal office of which is located at 1710 Broadway, New York 19, New York, for and in behalf of itself, such of its affiliates as are or may become parties to agreements with the Employer, and hereinafter collectively designated as the "Union", and for and in behalf of the employees now employed or hereafter to be employed by the Employer.

WHEREAS, Bobbie Brooks, Inc., represents that it is engaged in the manufacture and distribution of women's garments in various plants owned by it, hereinafter called "Employer-owned shops", as follows:

- a. Bobbie Brooks, Inc., Production Center, Cleveland, Ohio
- b. Bobbie Brooks, Inc., Customer Distribution Center and Warehouse, Cleveland, Ohio
- c. Bobbie Brooks, Inc., Quality Control Center, Elizabeth, New Jersey
- d. Bellaire Garment Co.
- e. Taffy Tucker, Inc.
- f. Montgomery-Sylvania Mfg. Co.
- g. Lockhaven Garment Co.
- h. Butler Garment Co.
- i. Washington Garment Co.
- j. Helena Garment Co.
- k. Lepanto Garment Co.
- l. Vandalia Garment Co.
- m. Colebrook Knitting Mills, Inc.

WHEREAS, a majority of the workers employed in the plants covered by this agreement have duly designated the Union as their exclusive bargaining representative for the purposes of collective bargaining with the Employer with respect to rates of pay, wages, hours, and other conditions of employment; and

WHEREAS, the parties have heretofore entered into collective bargaining agreements and desire to continue to cooperate in establishing conditions in the industry which will provide fair and reasonable conditions of labor and provide methods for the fair and peaceful adjustment of all disputes which may arise between them so as to secure uninterrupted operation and harmonious relations to the honor and dignity of all parties concerned as well as the general welfare of the community at large; and

* * * * *

ARTICLE II: BARGAINING UNIT AND UNION RECOGNITION

The Employer is engaged in commerce within the meaning of the Labor Management Relations Act, 1947, and in accordance with the

provisions of that Act, the Union is hereby recognized as the sole and exclusive collective bargaining agent for workers employed in the following bargaining unit:

All non-supervisory production, receiving, packing and shipping employees, employed in the garment shops now owned by the Employer or hereafter accreted to the bargaining unit, including all examiners and excluding all officers, executives, designers, supervisors, foremen, foreladies, instructors, maintenance men, plant clerical and office clerical employees.

* * * * *

ARTICLE V: TRIAL PERIOD

Newly hired experienced workers shall be deemed during their first month of employment and newly hired inexperienced workers shall be deemed during their first two (2) months of employment to be engaged for a trial period. During his trial period an employee may be discharged by the Employer for any cause without reference to the grievance procedure.

ARTICLE VI: HOURS-OVERTIME

The regular work week shall consist of thirty-five (35) hours divided equally into the first five (5) working days. All work outside the daily regular hours shall be considered overtime and shall be paid for at the rate of time and one-half. If any employee absents himself from work except for his bona fide illness, absence authorized by the Employer, or when work is not available during any of the first five (5) working days of the week, overtime shall be defined as being only those hours worked in the particular week which are in excess of thirty-five (35) hours. Saturday work as such shall be considered overtime and shall be paid for at the rate of time and one-half. Nothing herein contained shall be deemed to be a guarantee of employment. All overtime pay required under this Article that is not otherwise required by law shall be deemed to be "extra compensation" as such term is used in the Fair Labor Standards Act for the purpose of computing "straight time hourly rate".

The Employer agrees, to the extent possible, to give employees reasonable advance notice of overtime work.

ARTICLE VII: MINIMUM WAGES

(a) All piece workers shall receive a craft minimum hourly wage of no less than the following:

(i) Newly hired inexperienced workers.

<u>Effective:</u>	<u>January 1, 1963</u>	<u>September 3, 1963</u>
After 2 months:	\$1.25	\$1.35
After 3 months:	1.30	1.40
After 4 months:	1.35	1.45
After 5 months:	1.40	1.50
After 6 months:	1.50	1.60

(ii) Newly hired experienced workers.

<u>Effective:</u>	<u>January 1, 1963</u>	<u>September 3, 1963</u>
After 1 month:	\$1.50	\$1.60

Make-up pay for piece workers shall not exceed twenty (20¢) cents per hour above actual earnings, provided, however, that in no event shall these workers be paid less than fifteen (15¢) cents per hour above the prevailing federal minimum wage, except where the applicable craft minimum for a particular worker is less than this amount; and in such event he shall be paid no less than his applicable craft minimum.

(b) All plant shippers and receivers shall receive a craft minimum hourly wage of no less than the following:

<u>Effective:</u>	<u>January 1, 1963</u>	<u>September 3, 1963</u>
After 2 months:	\$1.25	\$1.35
After 3 months:	1.40	1.50

(c) All spreaders and cutters shall receive a craft minimum hourly wage of no less than the following:

(i) Inexperienced Spreaders.

<u>Effective:</u>	<u>January 1, 1963</u>	<u>January 1, 1964</u>
After 1 month:	\$1.20	\$1.30
After 2 months:	1.25	1.40
After 3 months:	1.35	1.50
After 4 months:	1.45	1.60
After 5 months:	1.55	1.70
After 6 months:	1.60	1.80

Spreaders who are selected for the cutter training program shall receive additional hourly increases of fifteen (15¢) cents every three (3) months until the prevailing minimum wage for cutters is achieved. The cutter's minimum shall be paid after twenty-four (24) months of employment as a spreader and cutter-trainee, provided, however, that the maximum credit for employment as a spreader for the purpose of paying the cutter minimum shall not exceed six (6) months.

(ii) Experienced Spreaders.

A spreader with at least six (6) months of experience shall receive a minimum hourly wage of no less than the following:

<u>Effective:</u>	<u>January 1, 1963</u>	<u>January 1, 1964</u>
Starting rate:	\$1.45	\$1.60
After 2 months:	1.60	1.80

(iii) Cutters.

Effective January 1, 1964, all experienced cutters presently employed shall receive a minimum wage of no less than \$2.75 per hour.

Newly hired experienced cutters with at least twenty-four (24) months of experience in spreading and cutting shall receive a minimum hourly wage as follows:

<u>Effective:</u>	<u>January 1, 1963</u>	<u>January 1, 1964</u>
Starting rate:	\$2.25	\$2.50
After 2 months:	2.50	2.75

(d) All other workers not included in the craft minimums above shall receive minimum hourly rates equal to fifteen (15¢) cents above the prevailing federal minimum wage, i.e., \$1.30 per hour on January 1, 1963 and \$1.40 per hour effective September 3, 1963, as follows:

<u>Effective:</u>	<u>January 1, 1963</u>	<u>September 3, 1963</u>
After 2 months:	\$1.25	\$1.35
After 3 months:	1.30	1.40

ARTICLE VIII: GENERAL WAGE INCREASE

(a) Effective January 1, 1963, all regular piece workers and hourly-workers shall receive a general increase in wages of seven and one-half (7-1/2%) percent. Effective September 3, 1963, these workers shall receive an additional increase of five (5%) percent.

(b) The parties recognize that many experienced cutters and spreaders received substantial increases during December, 1962. Accordingly, where such increases were granted, these cutters and spreaders shall, effective May 1, 1963, receive a general increase in wages of seven and one-half (7-1/2%) percent, and a second increase, effective January 1, 1964, which shall be equal to the amount required to bring their earnings up to \$2.75 per hour for cutters and \$1.80 per hour for spreaders. In no event shall the second increase exceed five (5%) percent.

(c) The increases for hourly workers shall be added to the prevailing hourly rates. The increases for piece workers shall be added over and above total piece rate earnings.

ARTICLE IX: PIECE RATES

(a) Piece rates shall be fixed by the Employer not later than two (2) regular working days after the work shall have been assigned to a piece-worker and upon a fair and equitable basis in order to provide piece-workers with an opportunity to earn a reasonable wage predicated upon skill, speed and production ability.

(b) The Employer shall make available to the Union upon its request the data employed in setting wages and piece rates.

(c) Complaints relative to piece rates shall be taken up for adjustment between the Employer and the Shop Committee not later than the tenth (10th) working day after work under the rates that are the subject of the complaint shall have begun. If they should fail to reach an agreement on the rate, the matter shall be submitted to the representatives of the Union and the Employer and their decision shall be binding. If no settlement is reached either party shall have and is hereby given the right

and authority to refer the matter in dispute to arbitration. All adjustments, if any, finally agreed upon or secured shall be retroactive to the date work started on the disputed operations or garments. No worker shall have the right to refuse to perform work pending the final adjustment of such disputed rate.

* * * * *

ARTICLE XXXV: TERM

This agreement shall go into effect as of the 1st day of January, 1963, and shall continue in effect until the 31st day of December, 1964, and shall thereafter automatically be renewed from year to year unless either party shall notify the other party in writing at least sixty (60) days prior to any such expiration date that it desires to change or modify the terms thereof.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals, and caused this agreement to be signed by their respective officers the day and year first above written.

BOBBIE BROOKS, INC.

By S/Stan L. Marshall, V.P. L.S.
(Name and Title)

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION

By S/ David Dubinsky L.S.
(Name and Title)

RESPONDENT'S EXHIBIT NO. 12

[This Exhibit appears at JA 49]

RESPONDENT'S EXHIBIT NO. 15

RESPONSE TO PETITION TO REVOKE
SUBPOENA DUCES TECUM
RE: BISHINS

TO THE HONORABLE TRIAL EXAMINER:

Comes now, RUSSELL-NEWMAN MANUFACTURING CO., INC., Respondent in the above styled and numbered cause and files this its Response to Letter dated June 10, 1965 purporting to be Petition to Revoke Subpoena Duces Tecum filed on behalf of the witness, Herman L. Bishins of Lily Lynn, Inc. and would show:

1.

Said letter of June 10, 1965 recites that it is filed "Pursuant to Rule 102.31 of the Board's Rules and Regulations, * * *". However, such is not the case in that, as shown by the Post Office Department registered receipt number 90490, a copy of which is attached hereto, marked as Exhibit "A" and made a part hereof, said Subpoena was served upon the witness, Bishins on June 3, 1965, and Section 102.31(b) of the Board's Rules and Regulations requires, as provided in Section 11(1) of the Labor Management Relations Act, as amended, that Petitions to Revoke Subpoenas must be filed within five (5) days of receipt of service by the witness. As a consequence, the said purported Petition to Revoke must be overruled as a tardy filing.

2.

Said letter of June 10, 1965 recites, as one of three grounds to revoke the subpoena to the witness Bishins, that "The above subpoena

calls for information and material which appear to be irrelevant to the above case now pending before the Board." The pleadings in this matter have joined issue as to whether or not the Charging Party made and published false representations concerning the specific documents required of the witness Bishins. The very documents whose specific terms are in issue are obviously relevant and thus the alleged grounds for revocation are without merit.

3.

The second ground advanced in said letter of June 10, 1965 for revocation of said subpoena is that it "* * * will cause tremendous hardship * * * for it entails travel of more than 4,000 miles to and from the hearing and the expenditure of additional time and effort, all to no seeming purpose." Public policy justifies and the Labor Management Relations Act, as amended, the Administrative Procedure Act and the Rules and Regulations of the National Labor Relations Board, as in all other cases of subpoenas, the expenditure of time over and above witness fees and mileage provided by law. For these reasons said contention is without merit.

4.

The third and last contention of said letter of June 10, 1965 to justify revocation of said subpoena is "* * * that there has been no tender made of witness fees or mileage fees or other items now required by law." The Rules and Regulations of the National Labor Relations Board do not require tender of mileage and witness fees in advance, but do impose upon Respondent the obligation to pay the same which Respondent is prepared to do, and will tender in advance if the Trial Examiner so orders it to do so.

WHEREFORE, PREMISES CONSIDERED, Respondent prays that said Motion to Revoke Subpoena Duces Tecum on behalf of Herman L. Bishins of Lily Lynn, Inc. be denied.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH &
SHELTON

By: /s/ Fritz L. Lyne

4000 First National Bank Building
Dallas, Texas 75202
Telephone: Riverside 1-4871

ATTORNEYS FOR RESPONDENT,
RUSSELL-NEWMAN MANUFACTURING CO., INC.

[Certificate of Service]

EXHIBIT "A" to RESPONDENT'S
EXHIBIT NO. 15

Post Office Department Official Business	
Russell-Newman 2318 Subpoena	Postmark of Delivering Office New Bedford, Mass. [Date Illegible]
INSTRUCTIONS: * * *	RETURN TO
Registered No. 90490	Name of Sender - George C. Dunlap 4000 First Nat'l Bank Bldg. Dallas, Texas 75202
Certified No.	
Insured No.	Bishins—Lily Lynn, Inc.

INSTRUCTIONS TO DELIVERING EMPLOYEE	
* * *	* * *
RECEIPT	
Signature or Name of Addressee Herman L. Bishins	
Signature of Addressee's Agent, If Any Jimmy Mederios	
Date Delivered JUNE 3, 1965	Show Where Delivered * * *

RESPONDENT'S EXHIBIT NO. 17SUBPENA DUCES TECUM

To - Mr. Herman L. Beishins of Lily Lynn, Inc.
Riverside Avenue, New Bedford, Massachusetts

Request therefor having been duly made by Russell-Newman Manufacturing Company, Inc. whose address is Denton, Texas, YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a trial examiner of the National Labor Relations Board, at the hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the City of Fort Worth, Texas on the 9th day of June, 1965, at 10 o'clock a.m. of that day, to testify in the Matter of Russell-Newman Manufacturing Co., Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents: The current collective bargaining contract in existence between Laredo Manufacturing Company, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO, and also the contract which was in effect immediately preceding the current contract between the above parties, along with all payroll records of the employees covered by the above said contracts, such payroll records to be for the period from July, 1961 to date.

In testimony whereof, the seal of the National Labor
B-55106 Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand and authorized the issuance hereof.

[SEAL] Issued at Fort Worth, Texas this 31st day of May, 1965.

/s/ John H. Fanning

RESPONDENT'S EXHIBIT NO. 18SUBPENA DUCES TECUM

To - Mr. Carlos Gonzalez of the Laredo Mfg. Company, Inc.,
Laredo, Texas

Request therefor having been duly made by Russell-Newman Manufacturing Company, Inc. whose address is Denton, Texas, YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a trial examiner of the National Labor Relations Board, at the hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the City of Fort Worth, Texas on the 9th day of June, 1965, at 10 o'clock a.m. of that day, to testify in the Matter of Russell-Newman Manufacturing Co., Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents: The current collective bargaining contract in existence between Laredo Manufacturing Company, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO, and also the contract which was in effect immediately preceding the current contract between the above parties, along with all payroll records of the employees covered by the above said contracts, such payroll records to be for the period from July, 1961, to date.

In testimony whereof, the seal of the National Labor
B-55103 Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand and authorized the issuance hereof.

[SEAL] Issued at Fort Worth, Texas this 31st day of May, 1965.

/s/ John H. Fanning

RESPONDENT'S EXHIBIT NO. 19SUBPENA DUCES TECUM

To - Mr. Bill Klein of Bobbie Brooks, Inc.,
Cleveland, Ohio

Request therefor having been duly made by Russell-Newman Manufacturing Company, Inc. whose address is Denton, Texas, YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a trial examiner of the National Labor Relations Board, at the hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the City of Fort Worth, Texas on the 9th day of June, 1965, at 10 o'clock a.m. of that day, to testify in the Matter of Russell-Newman Manufacturing Co., Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents: The current collective bargaining contract in existence between Bobbie Brooks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO, covering the operations of the subsidiaries of Bobbie Brooks, Inc. located in West Helena and Lepanto, Arkansas, and also the contract which was in effect immediately preceding the current contract in regard to the above operations and between the above parties, along with all payroll records of the employees covered by the above said contracts, such payroll records to be for the period from the date of execution of the contract prior to the current contract to date.

In testimony whereof, the seal of the National Labor
B-55102 Relations Board is affixed hereto, and the undersigned, a
member of said National Labor Relations Board, has here-
unto set his hand and authorized the issuance hereof.

[SEAL] Issued at Fort Worth, Texas this 31st day of May, 1965

/s/ John H. Fanning

RESPONDENT'S EXHIBIT NO. 20SUBPENA DUCES TECUM

To - Mr. Honore Ligarde of Amedee Frocks, Inc.
307 Market Street, Laredo, Texas

Request therefor having been duly made by Russell-Newman Manufacturing Company, Inc. whose address is Denton, Texas, YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE A Trial Examiner of the National Labor Relations Board at the hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the City of Fort Worth, Texas on the 9th day of June, 1965, at 10 o'clock a.m. of that day, to testify in the Matter of Russell-Newman Manufacturing Co., Inc. and the International Ladies' Garment Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents: The current collective bargaining contract in existence between Amedee Frocks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO, and also the contract which was in effect immediately preceding the current contract between the above parties, along with all payroll records of the employees covered by the above said contracts, such payroll records to be for the period from the date of execution of the contract prior to the current contract to date.

In testimony whereof, the seal of the National Labor
B- 55105 Relations Board is affixed hereto, and the undersigned, a
member of said National Labor Relations Board, has here-
unto set his hand and authorized the issuance hereof.

[SEAL] Issued at Fort Worth, Texas this 31st day of May, 1965

/s/ John H. Fanning

RESPONDENT'S EXHIBIT NO. 21SUBPENA DUCES TECUM

To - The Honorable Elmer Davis, Regional Director
For the Sixteenth Region, National Labor Relations Board

Request therefor having been duly made by Russell-Newman Manufacturing Company, Inc. whose address is Denton, Texas, YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a Trial Examiner of the National Labor Relations Board, at the hearing room, Sixth Floor, Meacham Bldg., 110 W. 5th St., in the City of Fort Worth, Texas on the 9th day of June, 1965, at 10:00 o'clock a.m. of that day, to testify in the Matter of Russell-Newman Manufacturing Co., Inc. and International Ladies' Garment Workers' Union, AFL-CIO.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents: A copy of the current union contracts between Amedee Frocks and Laredo Mfg. Co.; Kabro, Inc.; Bobbie Brooks, Inc. and the International Ladies' Garment Workers' Union, AFL-CIO; and all written correspondence, memorandums, and statements of witnesses in the files or under the control of the said Regional Director entered into or received in connection with the Supplemental Decision And Certification Of Representative in Case No. 16-RC-3714. (As regards Bobbie Brooks, Inc. contracts, please bring those which apply to Bobbie Brooks, Inc.'s subsidiary operations in West Helena and Lepanto, Arkansas.)

In testimony whereof, the seal of the National Labor
B- 55100 Relations Board is affixed hereto, and the undersigned, a
member of said National Labor Relations Board, has here-
unto set his hand and authorized the issuance hereof.

[SEAL] Issued at Fort Worth, Texas this 27th day of May, 1965
/s/ John H. Fanning

RESPONDENT'S EXHIBIT NO. 22REQUEST FOR ADMISSIONS

To: INTERNATIONAL LADIES' GARMENT WORKERS'
UNION, AFL-CIO
C/O MR. DAVID R. RICHARDS

Please admit or deny under oath the following statements, specifically and separately, and serve a copy of your answers on the undersigned within eleven (11) days of your receipt hereof. Please be on notice that under the Federal Rules of Civil Procedure a failure on your part to either specifically admit or deny each request or to fully explain why you cannot admit or deny each request will result in the request being deemed admitted for all purposes:

- (1) That on January 23, 1965, the International Ladies' Garment Workers' Union, AFL-CIO caused to be mailed to employees of Russell-Newman Manufacturing Company, Inc. in Denton, Texas the letter which is attached to these requests and marked as Exhibit "A".
- (2) That on January 23, 1965, the International Ladies' Garment Workers' Union, AFL-CIO caused to be mailed in the same envelope with Exhibit "A", attached hereto, a "newsletter" dated January 25, 1965, a copy of which is attached hereto and marked Exhibit "B".
- (3) That January 23, 1965 fell on a Saturday.
- (4) That Exhibits "A" and "B", attached hereto, were received by employees of Russell-Newman Manufacturing Company, Inc. at Denton, Texas on January 25, 1965, or thereafter.
- (5) That on the afternoon of January 25, 1965, the International Ladies' Garment Workers' Union, AFL-CIO, caused to be handed to employees of Russell-Newman Manufacturing Company, Inc., who were eligible to vote in the representation

election of January 26, 1965, a handbill, a copy of which handbill is attached hereto and marked Exhibit "C".

- (6) That on the morning of January 26, 1965, the International Ladies' Garment Workers' Union, AFL-CIO caused to be handed to employees of Russell-Newman Manufacturing Company, Inc., who were eligible to vote in the representation election of January 26, 1965, a handbill, a copy of which handbill is attached hereto and marked Exhibit "D".
- (7) That a representation election was held on the premises of Russell-Newman Manufacturing Company, Inc. in Denton, Texas on the afternoon of January 26, 1965 between the hours of 2:00 p.m. and 4:30 p.m.
- (8) That the mailing and distribution of Exhibits "A", "B", "C", and "D", attached hereto, to Denton, Texas employees of Russell-Newman Manufacturing Company, Inc. was so timed as to prevent any replies thereto by Russell-Newman Manufacturing Company, Inc.
- (9) That Laredo Mfg. Co. is a manufacturer of dresses.
- (10) That Laredo Mfg. Co. employs most of its workers on a piece-work basis.
- (11) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. provides in part, with respect to employees on a piece-work basis, that commencing July 6, 1965 said employees will have a starting minimum rate of \$1.25 per hour, which rate increases to \$1.35 per hour after four (4) months of employment and increases to \$1.40 per hour after six (6) months of employment.
- (12) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. provides in

part that on September 6, 1965 the minimum starting rate will be \$1.25 per hour, which rate will increase to \$1.40 per hour after four (4) months of employment and to \$1.50 per hour after six (6) months of employment.

- (13) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. provides in part that hourly paid employees of Laredo Mfg. Co. will receive compensation wage rates to \$1.40 per hour maximum, with no provision for further wage increases.
- (14) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. provides in part that the number of hours worked by the employees of Laredo Mfg. Co. shall be reduced from 37 1/2 to 35 hours per week.
- (15) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Laredo Mfg. Co. providing for increases in pay to the employees of Laredo Mfg. Co. was granted to compensate for a reduction in working hours.
- (16) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Kabro, Inc. of Houston, Texas provides in part that hourly workers' wage rates are to escalate from \$1.25 per hour to \$1.50 per hour over a three-year period.
- (17) That the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Kabro, Inc. of Houston, Texas provides in part that the minimum wage of \$1.60 per hour applies to only piece-work employees.
- (18) That the employees of Kabro, Inc. of Houston, Texas who are allowed more than \$1.60 per hour, under the terms of the contract between International Ladies' Garment Workers'

Union, AFL-CIO and Kabro, Inc., are all piece-work employees.

- (19) That under the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Kabro, Inc. of Houston, Texas, the 25 cents an hour increase for hourly workers at Kabro, Inc. was not a lump sum increase, but was and is to occur over a three-year period.
- (20) That the Shipping Department of Kabro, Inc. of Houston, Texas is non-union.
- (21) That the Shipping Department of Kabro, Inc. of Houston, Texas is not under a union contract.
- (22) That the Shipping Department of Kabro, Inc. of Houston, Texas was not, in January of 1965, under a union contract.
- (23) That the Shipping Department of Kabro, Inc. of Houston, Texas has never been under a union contract.
- (24) That on January 23, 1965, the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas had been negotiating on a new union contract for approximately two (2) months.
- (25) That in the union contract negotiations between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas, the Nardis Company did not, at the "start of talk for a new union contract", offer the union a 15 cent raise in minimum wages.
- (26) That in the negotiations for a union contract between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas, the original offer made by the Nardis Company was a 5 cent increase for the first year of a three-year contract, and a 4 cent increase each for the second and third years of the contract.

- (27) That during the week beginning January 18, 1965, in the negotiations for a contract between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas, the Nardis Company's offer to the union was increased from a 5 cent increase for the first year to a 7 1/2 cent increase for the first year, with a 4 cent increase each for the second and third years of the contract.
- (28) That prior to January 23, 1965, in the negotiations between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas, the Nardis Company had taken no position, favorable or unfavorable, as to granting a two-weeks paid vacation to its employees who had worked two (2) years or longer.
- (29) That in the union contract negotiations between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company, the Nardis Company made an original offer of three-weeks paid vacation for any employee who had been employed for over twenty (20) years.
- (30) That in the contract negotiations between International Ladies' Garment Workers' Union, AFL-CIO, and the Nardis Company of Dallas, Texas, the International Ladies' Garment Workers' Union, AFL-CIO countered to the offer described in No. (29) above with a demand for a two-weeks paid vacation for any employee who had been employed for over two (2) years.
- (31) That as of January 23, 1965, the negotiations on a contract between the International Ladies' Garment Workers' Union, AFL-CIO and the Nardis Company of Dallas, Texas had proceeded no further on the issue of paid vacations than is described in Nos. (29) and (30) above.

- (32) That none of the manufacturers mentioned in Exhibits "A" through "D", attached hereto, are competitors of Russell-Newman Manufacturing Company, Inc.
- (33) That none of the Exhibits "A" through "D", attached hereto, were placed in the hands of a majority of the employees of Russell-Newman Manufacturing Company, Inc. earlier than twenty-four (24) hours prior to the representation election held on January 26, 1965.
- (34) That in the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Bobbie Brooks, Inc., which was in effect on January 23, 1965, time workers were given wage increases ranging from 22 cents to 25 cents per hour over the three-year period of the contract.
- (35) That in the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Bobbie Brooks, Inc., which was in effect on January 23, 1965, the minimum wage rates for piece-workers were increased from \$1.60 per hour in 1964 to \$1.73 per hour in 1967.
- (36) That in the contract between the International Ladies' Garment Workers' Union, AFL-CIO and Bobbie Brooks, Inc., which was in effect on January 23, 1965, the minimum wage rates for time workers, excluding cutters, were increased from 20 cents to 35 cents per hour above the Federal \$1.25 hourly wage.
- (37) That Exhibit "A", attached hereto, contains false and/or misleading statements.
- (38) That Exhibit "B", attached hereto, contains false and/or misleading statements.
- (39) That Exhibit "C", attached hereto, contains false and/or misleading statements.

- (40) That Exhibit "D", attached hereto, contains false and/or misleading statements.
- (41) That Exhibit "A", attached hereto, was sent to the majority of the employees of Russell-Newman Manufacturing Company, Inc. who were eligible to vote in the January 26, 1965 representation election for the purpose of misleading the said employees.
- (42) That Exhibit "B", attached hereto, was sent to the majority of the employees of Russell-Newman Manufacturing Company, Inc. who were eligible to vote in the January 26, 1965 representation election for the purpose of misleading the said employees.
- (43) That Exhibit "C", attached hereto, was handed to the majority of the employees of Russell-Newman Manufacturing Company, Inc. who were eligible to vote in the January 26, 1965 representation election for the purpose of misleading the said employees.
- (44) That Exhibit "D", attached hereto, was handed to the majority of the employees of Russell-Newman Manufacturing Company, Inc. who were eligible to vote in the January 26, 1965 representation election for the purpose of misleading the said employees.

Respectfully submitted,

LYNE, BLANCHETTE, SMITH &
SHELTON

By: /s/ Fritz Lyne

By: /s/ George C. Dunlap

4000 First National Bank Bldg.
Dallas, Texas 75202
Riverside 1-4871

[Certificate of Service]

Attorneys for Respondent

TRIAL EXAMINER'S DECISION

Statement of the Case

This proceeding, heard at Denton, Texas, September 27, 1965, pursuant to a charge filed the preceding April 16 and a complaint issued May 6, arises out of Respondent's admitted refusal to bargain with the Charging Party, following the latter's victory in a Board-conducted election on January 26, 1965, and its certification the following March 5. Respondent, contending that its refusal to bargain was not unlawful, urges that the certification was improperly issued because (1) the unit was inappropriate and (2) the election was tainted by the Charging Party's last minute resort to improper, false, and misleading campaign propaganda.

This matter first came before me on General Counsel's Motion for Judgment on the Pleadings, filed May 18, 1965. After obtaining responses to an Order to Show Cause, I denied this motion on June 7, 1965, with an accompanying opinion in which I indicated that I believed a hearing would be appropriate as to the issue Respondent raised over the campaign propaganda, but not with respect to the other issues raised by Respondent, such as the appropriateness of the unit, as those issues had already been the subject of a formal hearing. The testimony and exhibits introduced at the hearing before me were therefore limited to that issue, except that the entire record in the representation proceeding (Case No. 16-RC-3714) is a matter of official notice at this stage of the proceeding, and becomes part of the record for purposes of judicial review, if such review materializes.

On the basis of the entire record^{1/} and on my observation of the witnesses, and after full consideration of the briefs filed by each of the parties, I make the following:

^{1/} I hereby correct the following typographical errors in the transcript: Page 12, line 17, "either" should read "neither"; line 24, "difference" should read "deference". Page 75 and elsewhere, "Fischons" should read "Bishins."

Findings of Fact

I. The business of the Company and the labor organization involved

The pleadings establish, and I find, that Respondent, herein called the Company, a Texas corporation engaged at Denton and at Pilot Point, Texas, in the manufacture of ladies' garments, annually ships products valued in excess of \$50,000 to points outside the State, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. I further find that the Charging Party, herein called the Union is a labor organization within the meaning of Section 2(5) of the Act. This is established by the contracts the Company itself introduced in evidence, as well as by the proceedings in the representation case, and indeed is a subject of such common knowledge, of so much published literature, and of so many reported cases, as to be subject to official notice. The Company's sworn answer insofar as it questions the Union's status as a labor organization is hereby stricken as sham.

II. The alleged unfair labor practice

The Board on December 7, 1964, issued a decision in Case No. 16-RC-3714, affirming the Regional Director's earlier determination that "all production and maintenance employees at the [Company's] Denton, Texas, plant, excluding designers, office clerical employees, guards, and supervisors as defined in the Act" constitutes a unit appropriate for the purposes of collective bargaining. An election was thereafter scheduled for Tuesday, January 26, 1965. The Union won this election 108 to 75, and was thereafter certified as the representative of the employees in the aforesaid unit. The Company at all times since the Union's certification has refused to bargain with it and in defense to this prima facie violation of Section 8(a)(5) and (1) challenges the appropriateness of the unit, and also urges that the election should be set aside because of the Union's last minute resort to what the Company contends is false and misleading propaganda. So far as the unit is concerned, this issue was fully litigated in the

representation proceeding and the matter is foreclosed at this level by the Board's decision. I therefore find that the above-described unit is appropriate. The facts with respect to the election propaganda were in dispute, were not the subject of a hearing in the representation proceeding, and hence were developed at the hearing before me. We turn, therefore, to a consideration of this issue.

A. The facts attending the dissemination of the challenged propaganda

As noted above, the election was scheduled for Tuesday, January 26, 1965; the polls were open from 2 p.m. to 3:30 p.m. at the "sewing plant" and from 4 p.m. to 4:30 p.m. at the "main plant." The preceding Saturday, January 23, the Union mailed certain campaign literature to the employees, a substantial number of whom received this material after 2 p.m. on Monday, January 25. On the morning of the election, January 26, the Union handed a further piece of campaign literature to the employees.

B. The challenged statements and the truth or falsity thereof

1. Amedee Frocks and Laredo Mfg. Co.^{2/}

a. The propaganda

The Union literature stated that in the last few months new union contracts were signed by Amedee Frocks and by Laredo Manufacturing Company providing every union member with a 25 cents per hour wage increase. The literature also included a representation that the contract provided a 25 cents hourly increase for cutting department employees.

b. The contracts

The Union had executed new contracts covering those plants a few months before the election in this case. The previous contracts had provided, inter alia, for an hourly wage rate of \$1.10 an hour effective January

^{2/} The Union's contracts with these two employers are identical.

1, 1961, and \$1.15 an hour effective January 1, 1962. The contract further provided:

However, if the federal minimum wage is increased after January 1, 1961, by fifteen (15¢) cents an hour, each of the above minimums shall be increased by ten (10¢) cents an hour on the effective dates provided above (but not prior to the effective date of the increase in the federal minimum wage) and shall be further increased by an additional five (5¢) cents six (6) months after the said ten (10¢) cent increase is made effective.

The federal minimum wage was raised 15 cents an hour in legislation enacted May 5, 1961, and effective 120 days thereafter, or in early September. 29 USC 206. The result was to raise the January 1, 1962 minimum to \$1.25, and the additional 5 cents referred to in the above provision should have been added a few months later.

The new contract provided a minimum wage for "all workers" effective in July 1964 and ranging from \$1.25 per hour during the trial period to \$1.40 after 6 months' experience. The new contract further provided minimum wages for "operators" commencing in September 1965, prescribing \$1.25 per hour for the trial period and ranging up to \$1.50 per hour after 6 months' experience. Finally the contract provided that in July 1964 time-workers would "receive a compensating wage increase to offset the reduction in work hours" from a 37 1/2 to a 35 hour workweek, and that piece-workers would receive an increase of 7.14 percent.

c. The testimony

The testimony of Union Representative Vickers is that the employees at Amedee Frocks are hourly paid as are the Company's employees, whereas the great majority of the Laredo Manufacturing employees are pieceworkers. Vickers further testified that by oral agreement the piece-rate increase for the Laredo workers was 13 percent, rather than 7.14 percent as provided in the contract. According to Vickers, he understood the applicable minimum hourly rate at Laredo and Amedee prior to the signing of the new contract was \$1.25, and he rather vaguely recalled hearing that "the union and the [Laredo] Company got into a dispute over what the wage should be since the

federal minimum wage had been raised during this period of time and as a result the wage increases stayed exactly where they were." Vickers testified that Laredo employed one cutter and one apprentice, both hourly paid employees. At one period he testified that a New York representative of the concern owning Laredo Manufacturing orally agreed to give the cutting department a 25 cent an hour increase; later Vickers replied "I don't know" to the suggestion of Company counsel that the cutter's increase had been 12 1/2 cents, rather than 25 cents, an hour. It also appears from Vickers' testimony that as late as September 1965 not all the cutting department at Laredo had received the wage increase he thought had been agreed to. Finally, Vickers testified that while Amedee Frocks had given a 25 cent wage increase to everyone, "Laredo Manufacturing Company, with the exception of a few people, have not."

2. Kabro of Houston, Inc.

a. The propaganda

The union literature stated that "The new union contract at Kabro, Inc. provides a minimum wage of \$1.60 and a 25 cent an hour increase for timeworkers." The union literature also recited that Kabro had "signed an agreement with the Union granting a 25 cent an hour wage increase to the members in the Cutting and Shipping Department."

b. The evidence

Vickers' testimony establishes that the wage increases referred to were provided in a contract with Kabro which was never actually signed, as Kabro sold its business to a New York company. The wage increases were in effect and were continued by the new owner, although a written contract was not executed until August 1965. The 25 cent increase was spread over a 3 year period, 10 cents in each of the first 2 years and 5 cents in the third. The contract executed in 1965 expressly excludes shipping clerks and deliverymen, as did the prior written contract with Kabro. Vickers testified that the wage increase was given to "the people in the cutting and shipping department."

3. Bobbie Brooks, Inc.

a. The propaganda

The union literature stated that at the Bobbie Brooks plants at West Helena and Lepanto, Arkansas, more than 800 union members had a new contract which "provides a minimum wage of \$1.73 an hour for operators, \$3.10 an hour for cutters, \$2.05 an hour for spreaders, and a 22¢ an hour increase for other time workers."

b. The evidence

The Union's contract with Bobbie Brooks, which had been agreed to but not executed at the time the literature here in question was distributed (indeed, it had not been reduced to writing at the time of the hearing), provided a minimum wage of \$1.73 for experienced pieceworkers effective January 3, 1967 (earlier increases in the minimum were effective in January 1965 and January 1966). The new agreement did not expressly provide new minimums for cutters and spreaders, but it did provide for a 3-step increase in their existing wages, which in effect amounted by January 1967 to a 13 percent increase. Other time workers received a 22 cent wage increase over the 3 year span. The rates of \$3.10 and \$2.05, used in the Union's propaganda, were arrived at by adding 13 percent to the cutter's rate of \$2.75 and to the spreader's rate of \$1.80. According to Vickers, he knew that the cutters at West Helena had a minimum hourly wage of \$2.75 and the spreaders had a minimum hourly wage of \$1.80 when this agreement was reached. He further testified that no cutters were employed at Lepanto.

Vickers testified that if at the time of the hearing any cutters or spreaders employed by Bobbie Brooks were making \$2.75 or \$1.80, respectively, they were in an "apprenticeship" and were not receiving the "top minimum." In the Brooks contract immediately preceding that here in question, the minimum rates for "experienced" cutters and spreaders were \$2.75 and \$1.80, respectively, after 2 months' employment, and "inexperienced" spreaders received the journeyman's minimum after 6 months.

4. Nardis Sportswear

a. The propaganda

The Union's literature recited that "at the start of talks for a new Union Contract, the Nardis Company has already offered the Union a 15 cent an hour raise in minimum wages, more Holiday Pay; and the Company is looking favorably on granting 2 weeks paid vacation for anyone who has worked 2 years or longer. (They now have 2 wks. after 5 yrs.)"

b. The evidence

Werner Friedman, production manager of Nardis Sportswear, testified that at the time of the Union literature negotiations were in progress between Nardis and the Union. At the last meeting prior to the distribution of the literature here in question, Nardis had offered an increase in the minimum wage of 7 1/2 cents an hour, and had also offered an overall increase in wages, over a 3 year span, of 13 cents an hour. Friedman further testified that at that time the parties agreed to pass the issues of holidays and vacations to later negotiations.

Vickers testified as to the Nardis negotiations that when the Union proposed 2 weeks vacation after 2 years' service, Nardis' counsel replied that if the differences on wages could be resolved, he was sure the vacation matter could be settled. Vickers also testified that the same attitude was reflected in the discussions of holiday pay, in that the Union had asked for an additional holiday and Nardis' counsel said he was sure the matter could be worked out once the wage increases were settled. At that time, however, the Company had not offered the Union more holiday pay.

The contract later executed by Nardis and the Union, as compared with the preceding contract, granted an additional half-day's holiday, 2 weeks vacation after 3 years' employment, and numerous wage increases, many of them more than 15 cents per hour, but only a 10 cent per hour increase in the minimum applicable to all employees not covered by the rates established for particular classifications. However, the new contract

also provided for 7 1/2 cent hourly increases in 1965 and again in 1966, and hence effected a minimum increase of 15 cents for persons then employed.

C. The subpoenas and the
offer of proof

The foregoing discussion sets forth the pertinent evidence concerning the truth or falsity of propaganda, insofar as such evidence was admitted at the hearing. In addition, the Company offered to prove through the testimony of Frank Martino, vice-president of the Company, that in conversations with Messrs. Klein of Bobbie Brooks, Bishins of Lily Lynn, Inc. (the owner of Kabro), and Gonzalez of Laredo Manufacturing, he had been told certain matters inconsistent with the statements contained in the Union's propaganda. More specifically the Company offered to prove through Martino that Klein told him Bobbie Brooks "has other cutters who are getting a minimum of \$2.75 per hour who are not journeymen; . . . that he also has spreaders that are getting a minimum of \$1.89, and that he has spreaders getting a minimum of \$1.80, and these are all classified as spreaders." As to Bishins, Martino would have testified that Bishins told him the shipping department was not included in the Kabro contract. As to Gonzalez, Martino would have testified that Gonzalez told him that approximately 70 percent of Laredo's employees are operators, that Laredo employees worked approximately 30 weeks a year, and that "there is one cutter [at the plant] whose rate in February 1965 was \$1.87 1/2 per hour on a 35 hour week whose rate had been on July 11, 1964, \$1.75 on a 37 1/2 hour week."^{3/} I directed that the foregoing matters stand in the record as an offer of proof, for I sustained objections to Martino's testifying along those lines on the ground that the testimony would be hearsay, of no probative force.

^{3/} The transcript shows the last figure as 35, but I am certain that Company counsel said, or meant to say, "37 1/2."

In this connection it is appropriate to note that the Company had obtained subpoenas duces tecum directed to Messrs. Klein, Bishins, and Gonzalez, each of whom had in turn filed a motion to revoke which I granted. The subpoenas in question directed each of the men in question to produce at the hearing their company's current contract with the Union, the next preceding contract, and all payroll records for the period covered by the two contracts. A similar subpoena was directed to Mr. Honore Ligarde of Amedee Frocks, Inc.

Each of the persons subpoenaed alleged in their motions to revoke that they were strangers to the controversy between the Company and the Union, and that furnishing the payroll records would be unduly burdensome. Thereafter, the Company apparently agreed with Ligarde not to insist upon his payroll records if Ligarde would abandon his motion to revoke.

After the Union agreed to furnish the contracts here in issue, I quashed the subpoenas directed to Klein, Bishins, and Gonzalez.^{4/} I did so because in my view it was burdensome to impose on those men and their companies the travel involved (2400 miles in the case of Klein, 3600 miles for Bishins, and 1000 miles for Gonzalez) and the production of such extensive records. In this connection, the Company's indication to Ligarde that it would waive the request for his records further indicated that the furnishing of the contracts would suffice. The Company did not at any time apply for subpoenas ad testificandum.

^{4/} In addition to the extensive subpoena matters introduced into evidence at the hearing, certain correspondence pertaining thereto passed between the Trial Examiner and the parties prior to the hearing which correspondence was not introduced into evidence. To complete the record I hereby incorporate into the records as Trial Examiner's Exhibits 1-5 the following documents:

1. (a) Letter of August 19, 1965, from Company Counsel to Trial Examiner.
(b) Unexecuted stipulation referred to in 1a, above.
2. Trial Examiner's letter in response, dated August 24, 1965.
3. Trial Examiner's letter to all counsel, dated August 31, 1965.
4. Company counsel's reply to No. 3, dated September 9, 1965.
5. Union Counsel's reply to No. 3 dated September 15, 1965.

At the hearing, the Company agreed not to press for Ligarde's testimony unless, upon examining the Union — Amedee Frocks contract, the Company believed there was any material variance between that contract and the contract with Laredo. As the matter has been dormant since the close of the hearing, I must assume that the Company is satisfied insofar as the Ligarde matter is concerned. The remaining subpoena matters are preserved in the record, so that the Company is free to argue to the Board and to any other reviewing tribunal that the Trial Examiner erred in revoking the subpoenas. The subpoenas, had they been kept in force, would have required Mr. Bishins to journey from New Bedford, Massachusetts, and to produce all Kabro payrolls since November 1960, Mr. Klein to travel from Cleveland, Ohio, with all Bobbie Brooks payrolls at two Arkansas plants since January 1963, and Mr. Gonzalez to travel from Laredo, Texas, with all his payrolls since July 1961.^{5/}

D. Concluding findings

The facts summarized above disclose certain inaccuracies and some misleading statements in the questioned literature. They may be summarized as follows:

1. At Nardis, the offered wage increase was 13, rather than 15, cents an hour, and the 13 cent offer was spread over a 3 year period, a factor discussed more fully below.
2. Also at Nardis, contrary to the Union's representation, the employer had not offered more holiday pay.
3. At Kabro, the contract had not been "signed" (a technical misrepresentation of no serious import in my view), the 25 cent increase was spread over 3 years (a matter discussed below), and the agreement which the Union represented as applying to the "Cutting and Shipping Department" applied to cutting but not to shipping.

^{5/} In view of the observation of Company counsel that "We subpoenaed the people that knew and that has been quashed on us" (Tr. 69), it may be appropriate to note that according to the testimony of Vickers, the appearance of Bishins might well have proved of little value as Vickers' dealings with Lily Lynn, Inc., were through one Abraham Teffer, who was not subpoenaed, and not with Bishins.

4. At Brooks, the \$1.73 minimum, the 22 cent increase, and the 13 percent increase were not effective until 1967; the rates immediately effective called for a \$1.65 minimum, a 9 cent increase, and a 5 percent increase. Aside from those matters, which are discussed below, the literature as to Brooks was inaccurate only insofar as it referred to cutters at West Helena and Lepanto when there were no cutters at the latter plant, and insofar as it referred to minimum wages for cutters and spreaders which minimums applied only after 2 months' employment.

5. At Laredo and Amedee, whether the new contract provided a 20 or 25 cent hourly increase depends on whether the employees had been paid \$1.30 or a \$1.25 under the old contract. That document by its terms seems to require a \$1.30 minimum as of its expiration date, but Vickers testified that a dispute had arisen and that the employees were receiving only \$1.25. The literature is incorrect, however, insofar as it refers to a 25 cent hourly increase for cutting department employees at Laredo. The cutter there received an hourly increase from \$1.75 to \$1.87 $\frac{1}{2}$ to compensate for the reduction in weekly hours from 37 $\frac{1}{2}$ to 35.^{6/} What the Union referred to, however, was an oral agreement that Vickers made with Laredo's New York owner to give the cutting department an increase in early September 1965 when the contract provided an increase for operators. At the time of the hearing, however, in late September 1965, not all the cutting department employees had received the increase in question.

In short, aside from the matters I have expressly reserved for discussion below, the Union's literature was accurate in all important respects except for a 2 cent error in the Nardis offer, the misstatement as to Nardis' holiday offer, the inclusion of shipping in Kabro's contract, and the representation of a 25 cent increase for Laredo cutting, which did not materialize.

^{6/} \$1.75 for a 37 $\frac{1}{2}$ hour week equals \$1.87 $\frac{1}{2}$ for a 35 hour week.

The most important question as to the accuracy of the literature, however, is that raised by its using as minimums wage rates and wage increases not effective until years later. The literature invites the employees to "take a good look at some of the many good things voting for the Union has brought garment workers . . . just in the last few months." It then recites that at Kabro the new contract "provides . . . a 25¢ an hour general increase for time workers." But the Kabro agreement provided a 10 cent increase in 1965, 10 cents more in 1966, and 5 cents more in 1967. The literature states that at Bobbie Brooks the employees "now have a new Union contract which provides a minimum wage of \$1.73 for operators; \$3.10 an hour for cutters; \$2.05 an hour for spreaders; and a 22¢ an hour increase for other timeworkers." The Brooks contract called for a minimum of \$1.65 in 1965, \$1.70 in 1966, and \$1.73 in 1967. It provided 9 cents an hour increase in 1965, 9 cents more in 1966, and 4 cents more in 1967. And the \$3.10 and \$2.05 rates were based on a 13 percent raise, a figure reached because the contract awarded 5 percent in 1965, 4 percent in 1966, and 3 percent in 1967, and the last two increases were to be figured on the rates effective at the time of each increase, making a total increment of about 13 percent over the then existing rate. Similarly, the literature states that "the Nardis Company has already offered the Union a 15¢ an hour raise in minimum wages," whereas the actual offer was in 3 one-year stages of 4, 4, and 5 cents, respectively.

As an original proposition I would regard this type of propaganda as deliberately misleading. To tell employees that "contracts provide" certain minimums which the Union "has brought . . . in the last few months" seems to me to imply that those rates are now in effect. All that was needed to make the statements accurate was to add the expression "over a 3 year period." The omission of that simple phrase suggests to me a deliberate intention to mislead.

I am aware that Regional Director Davis feels otherwise, for in his Supplemental Decision and Certification he recites that the representations as to Brooks "were both accurate and truthful," and he also recites

that he examined the Union's newspaper which fully reports the progressions in wages set forth above. Also, in that same decision the Regional Director spells out the three steps needed to reach the 25 cent increase at Kabro, and the Board denied review in a telegram signed by the Associate Executive Secretary, which recited that the request for review "raises no substantial issues warranting review."

The Board's position may well have rested, however, upon the belief that of all the rates and increases claimed by the Union only the Kabro increase was of a deferred type. Its view may well be otherwise (and in my judgment should be otherwise) when it realizes that the same characteristic inheres in the union's representations at Brooks and Nardis, and applies not to merely one figure in the literature but to six.

The law relating to when elections will be set aside has been recently restated by the Board in Hollywood Ceramics Co., 140 NLRB 221; see also the note at 3 ALR 3d 889, 913-917. Without restating all the applicable principles, I regard the cumulative effect of the inaccuracies and misleading statements here to be so substantial as to require setting the election aside.^{7/} I therefore find that the Company was not under a legal obligation to bargain with the Union and recommend dismissal of the complaint.^{8/}

Conclusions of law

1. The Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

^{7/} In so finding, I am not motivated by the fact that the various companies to which the literature refers are not competitors of the Company, or that some of the rates referred to were for pieceworkers whereas all the Company employees are hourly paid. The Union's literature covered all the plants in Texas and neighboring states in which the Union had contracts.

^{8/} The Union has urged that a bargaining order issue, and that the order include a specific prohibition against unilateral action and a specific requirement for the production of data. Correspondence in the record establishes that such provisions would be appropriate if the duty to bargain existed. See G. C. Ex. 3-14.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The unit found appropriate in Case No. 16-RC-3714 is an appropriate bargaining unit within the meaning of Section 9(b) of the Act.

4. The Union had not demonstrated in a valid election or by other means that it represents a majority of the employees in the aforesaid unit, and the Company was therefore under no legal obligation to bargain with the Union at any time up to and including the date of the hearing in this proceeding.

5. The Company has not committed the unfair labor practices alleged in the complaint.

RECOMMENDED ORDER

The complaint should be, and hereby is, dismissed.^{9/}

Dated at Washington, D. C. December 7, 1965.

/s/ Frederick U. Reel
Trial Examiner

^{9/} The Board may deem it advisable to vacate all proceedings in Case No. 16-RC-3716 which followed its decision of December 7, 1964, finding the unit appropriate, and to direct the Regional Director to hold an election in that proceeding.

DECISION AND ORDER

On December 7, 1965, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the Charging Party and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs, and Respondent filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and adopts the findings of the Trial Examiner only to the extent consistent herewith.

The basic facts are as follows: Pursuant to a Decision on Review issued by the Board on December 7, 1964, an election by secret ballot among the employees of Respondent in the appropriate unit was conducted by the Regional Director for Region 16 on January 26, 1965.^{1/} The tally of ballots indicated that the Union had received a majority of the votes cast. Thereafter, Respondent filed objections to conduct affecting results of the election. On March 5, the Regional Director, after an investigation, issued a supplemental decision in which he overruled Respondent's objections, and certified the Union as the collective-bargaining representative

^{1/} Except where otherwise indicated, all dates are in 1965.

of Respondent's employees. Respondent then filed with the Board a timely request for review of this decision, which was denied by the Board in a telegraphic Order dated March 26 (Case No. 16-RC-3714).

Pursuant to a charge filed April 16 by the Union, the complaint herein was issued on May 6 alleging that Respondent refused to bargain with the Union on and after March 10, in violation of Section 8(a)(5) of the Act. In its answer, Respondent admitted that it had refused to bargain with the Union but contended that its refusal was justified on the ground that the Board's certification of the Union was invalid because statements in the Union's election campaign propaganda concerning the wage provisions of union contracts at other plants constituted material misrepresentations of fact which interfered with the freedom of choice of the employees at the election. These alleged misrepresentations were the same as those relied on by Respondent in its objections to the election filed in the original representation proceeding.

The General Counsel then filed a motion to strike portions of Respondent's answer and a motion for judgment on the pleadings. These motions were referred to the Trial Examiner. On May 28, the Trial Examiner issued an Order to Show Cause, accompanied by an opinion, in which he indicated that since no hearing had been held in the representation case with respect to the disputed election propaganda, he would afford to Respondent an opportunity to show what facts, if any, it was prepared to adduce contrary to those set forth in the Regional Director's supplemental decision, in support of its position that the election should be set aside. Respondent submitted its offer of proof, and on June 4, the Trial Examiner denied the General Counsel's motions.

Thereafter, on June 10, the General Counsel filed with the Board a request for special permission to appeal the Trial Examiner's rulings. The General Counsel contended that an examination of the pleadings indicated the only real issue in this proceeding was whether Respondent's objections to the Union's campaign propaganda should be sustained and since this issue was settled in the underlying representation case, under

well-established Board rules, Respondent is not entitled to an opportunity to relitigate these matters in the unfair labor practice proceeding. On July 14, the Board denied this request by the General Counsel and a hearing was held on September 27.

The issue whether Respondent has unlawfully refused to bargain with the Union turns solely on whether the election herein, which resulted in the Board's certification of the Union, should be set aside because of alleged misrepresentations contained in campaign leaflets distributed by the Union.

As described more fully in the Trial Examiner's Decision, on January 25, the day before the election, the Union distributed a handbill entitled "Election Final, Union Election Campaign Committee, ILGWU Newsletter." This handbill stated "yes, take a good look at some of the many good things voting 'yes' for the Union has brought garment workers in some of the Union shops in Texas, Oklahoma and Arkansas — just in the last few months." The handbill then listed five companies and referred to the wage increases or minimum wages provided for in the new contracts, and went on to describe the new union contract at the Kabro plant in Houston, Texas, as providing "a 25¢ an hour general increase for timeworkers." The handbill also stated regarding the negotiations which were then in progress for a new Union contract that at the Nardis Company's plant in Dallas, "the company has already offered the Union a 15¢ an hour raise in minimum wage;" and that the 800 Union members at the Bobbie Brooks plant in Arkansas "now have a new Union contract which provides a minimum wage of \$1.73 an hour for operators, \$3.10 an hour for cutters, \$2.05 an hour for spreaders and a 22¢ an hour increase for other time workers." The handbill also referred to contracts negotiated by the Union at other plants in Laredo, Texas, and Bristow, Oklahoma. The other leaflet which Respondent alleged contained material misrepresentations included statements as to provisions in the Kabro, Laredo, and Bobbie Brooks contracts relating to cutting and shipping department employees. This leaflet was distributed on January 26, the day of the election.

The Trial Examiner initially rejected Respondent's contention that the election had been conducted in an inappropriate unit, on the ground that the issue as to the appropriateness of the unit had been fully litigated in the representation proceeding, and the Board's decision therein foreclosed further litigation on this issue in the instant unfair labor practice case. We agree, However, the Trial Examiner considered Respondent's contention that certain statements in the campaign propaganda constituted material misrepresentations of fact, and concluded that although the statements contained in the leaflets were otherwise accurate in all important respects,^{2/} the election should be set aside because the references in the leaflets to minimum wage rates and wage increases not effective "until years later" constituted a deliberate effort on the part of the Union to mislead the employees.

In making this finding, the Trial Examiner relied upon the language in the leaflets used to describe the Kabro, Bobbie Brooks and Nardis contracts. Thus, the Trial Examiner noted that although the leaflet stated that at Kabro the new contract "provides . . . a 25¢ an hour general increase for time workers," the contract actually provided for a 10¢ per hour increase in 1965, a 10¢ increase in 1966, and a 5¢ increase in 1967; that the propaganda stated that "the Nardis Company has already offered the Union a 15¢ an hour raise in minimum wages" while the actual offer was for increases in three 1-year stages of 4, 4, and 5¢, respectively; and that at the Bobbie Brooks plant, the minimum wage rates for operators, cutters and spreaders and the 22¢ per-hour increase for other time workers, referred to in the union handbill, would not be in effect until the third year of the contract. Relying upon the principles set forth in

^{2/} The Trial Examiner found that the Union's propaganda was inaccurate only as to a 2¢ error in the Nardis offer, a misstatement as to Nardis' holiday offer, inclusion of shipping employees in Kabro's contract, and the representation of a 25¢ increase for Laredo cutting employees which did not materialize. However, he concluded that these inaccuracies were not sufficient reason to set aside the election. We agree with this conclusion.

Hollywood Ceramics,^{3/} the Trial Examiner concluded that the cumulative effect of the inaccuracies was substantial enough to warrant setting aside the election, and since Respondent therefore had never been under a legal obligation to bargain, he recommended that the complaint be dismissed. The Trial Examiner also stated that the Board might deem it advisable to vacate all proceedings in the underlying representation case and to direct an election in that proceeding.

The General Counsel excepts to the Trial Examiner's findings, arguing, inter alia, that a fair reading of the leaflets refutes the Trial Examiner's conclusion that the Union's failure to specify that the increases mentioned in the propaganda were spread over the life of the contracts constituted a deliberate effort on the part of the Union to mislead the employees. The Union also excepts to the Trial Examiner's findings, arguing that not only was the propaganda accurate in all respects, but also that it is now common practice to describe economic gains received under a contract in terms of the total "cost of the package" since the future increases were guaranteed by the contract.

We find merit in these exceptions. At the outset, we note that the leaflet did not state that the full raises were immediately effective. Rather the leaflet stated only that the contract "provides for" those increases, and this is literally true. Moreover, the leaflet's reference to the still inchoate Nardis contract further demonstrates that the propaganda was referring to the ultimate wage increases to be gained, rather than to any immediate increase because, in this instance, the parties were engaged in negotiations for a new contract, and no wage increase at all had become effective. Thus, the fact that the propaganda fairly characterized the Nardis negotiations further serves to bolster our conclusion that the statements about the other contracts were not misrepresentations.

^{3/} Hollywood Ceramics Co., 140 NLRB 221.

The Trial Examiner's conclusion that the leaflet was sufficiently misleading to warrant setting aside the election is in large part predicated on the Union's failure to add that the wage increases described in the leaflet would be effective "over a three-year period." Although it is true that the addition of this phrase would have made the statements unmistakably clear, so much so that no objection would even have been tenable with respect to them, the omission is scarcely enough, in itself, to justify the Trial Examiner's inference that the Union's failure to add this phrase was deliberately intended to mislead the employees. Indeed, in Hollywood Ceramics, supra, the Board held that an election should be set aside only where there has been a misrepresentation or similar campaign trickery which involves "a substantial departure from the truth," and that it would not set aside an election on the basis of propaganda where the message it sought to convey was merely "inartistically or vaguely worded and subject to different interpretations." This being so, we think that the Union's propaganda herein, at worst, was an exaggeration of fact, subject to different interpretations, and as such would not constitute a sufficient basis for setting aside an election. Indeed, we note that a characterization of a 3-step wage increase in terms of a total package is now a relatively common method of announcing such benefits in newspapers, trade publications and the like.

In concluding that the election should be set aside, the Trial Examiner recognized that the Regional Director, after considering the Union leaflets, had found that there was no merit in Respondent's objections, and the Board had denied review of this decision. The Trial Examiner stated that "the Board's position may well have rested, however, upon the belief that of all the rates and increases claimed by the Union only the Kabro increase was of a deferred type" and that the Board's view may well have been otherwise if it realized "that the same characteristic inheres in the union's representations at Brooks and Nardis, and applies not to merely one figure in the literature but to six." But, the Regional Director's supplemental report makes it clear that he was aware that the increases at the Brooks

and Nardis plants were also of a deferred type. The report explicitly states that the Nardis offer was a "7 1/2 cent per hour increase the first year with 4¢ per hour increase during the two ensuing years of a three-year contract," and it contains an excerpt from an article in Woman's Wear Daily and an article from the Union's newspaper discussing in great detail the Brooks' contract and indicating that the raises were over a 3-year period. Thus, contrary to the Trial Examiner, it was on the basis of essentially the same evidence that is before the Board in the instant case that the Regional Director concluded that the Union's campaign propaganda did not "constitute a substantial departure from the truth calculated to trick or delude employees," and that the Board refused review of this decision.

In view of the foregoing and the record as a whole, we find, as did the Regional Director, that the inaccuracies and misleading statements, if any, were not substantial enough to require setting aside the election. Accordingly, we find that on March 10, 1965, and at all times thereafter, Respondent refused to bargain with the Union, in violation of Section 8(a)(5) of the Act.^{4/}

The complaint alleged and the answer admits, that Respondent refused to furnish to the Union, after its certification, data regarding certain proposed changes in its operations that would affect employees in the unit, and a list of employees in the unit, including their classifications, seniority dates, and rates of pay. We find that such refusal further violated Section 8(a)(5).

^{4/} In view of our disposition herein, it is unnecessary to rule upon the Charging Party's Motion to Reopen the Record.

Respondent moves that in the event the Board disagrees with the conclusion of the Trial Examiner, the record be reopened in order that it be permitted to adduce certain evidence excluded by the Trial Examiner. However, since Respondent made no clear statement as to what evidence it proposed to adduce, and since in any event such evidence apparently would be cumulative, we deny Respondent's motion.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices affecting commerce, we shall order that it cease and desist therefrom and take certain affirmative action in order to effectuate the purposes of the Act.

We have found that Respondent violated Section 8(a)(5) of the Act by refusing to recognize the Union and bargain in good faith and by refusing to furnish certain data to the Union. We shall therefore order that Respondent cease and desist from refusing to bargain and from refusing to furnish this data. We shall further order that Respondent bargain, upon request, with the Union as the exclusive representative of the employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement, and that upon request, it furnish this data to the Union.

Additional Conclusions of Law

Upon the basis of the foregoing findings of fact and the entire record in this case, we hereby delete the Trial Examiner's conclusions of law 4 and 5, and adopt new conclusions of law 4 through 6 as follows:

4. At all times since January 26, 1965, International Ladies' Garment Workers' Union, AFL-CIO, has been the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment.

5. By refusing, on and after March 5, 1965, to bargain collectively with the aforesaid labor organization as the exclusive representative of its employees in the appropriate unit, and by refusing to furnish certain data to the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The unfair labor practices enumerated above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Russell-Newman Manufacturing Co., Inc., Denton, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours of employment, or other terms and conditions of employment, with International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive representative of its employees in the following appropriate unit:

All production and maintenance employees at Respondent's Denton, Texas, plant, excluding designers, office clerical employees, guards, and supervisors as defined in the Act.

(b) Refusing to furnish to said labor organization, on request, data concerning proposed changes in its operations that would affect employees in the appropriate unit and a list of employees in the unit, including their classifications, seniority dates, and rates of pay, as requested by the Union in March 1965.

(c) In any like or related manner interfering with the efforts of the employees' exclusive representative to bargain collectively on their behalf.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request meet and bargain collectively with International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive representative of all of its employees in the unit found appropriate herein, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a written signed agreement.

(b) Upon request, make available to the Union data concerning proposed changes in its operations that would affect employees in the appropriate unit, and a list of employees in the unit, including their classifications, seniority dates, and rates of pay, as requested by the Union in March 1965.

(c) Post at its plants in Denton, Texas, copies of the attached notice marked "Appendix".^{5/} Copies of said notice, to be furnished by the Regional Director for Region 16 shall, after being duly signed by the Company's representative, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. The Company shall take reasonable steps to ensure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 16, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C. June 1, 1966.

Frank W. McCulloch, Chairman

Gerald A. Brown, Member

Sam Zagoria, Member

NATIONAL LABOR RELATIONS
BOARD

(SEAL)

^{5/} In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order".

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain collectively with **INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO**, as the exclusive representative of all employees in the bargaining unit described below concerning rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All production and maintenance employees employed at the Denton, Texas, plant, but excluding designers, office clerical employees, guards, and supervisors as defined in the Act.

WE WILL, upon request, furnish to the above-named Union data concerning proposed changes in our operations that would affect employees in the appropriate unit and a list of employees in the unit, including their classifications, seniority dates, and rates of pay, in order that it may properly discharge its function as the statutory bargaining representative of our employees in the bargaining unit described above.

WE WILL NOT in any like or related manner refuse to bargain collectively with said labor organization as the exclusive representative of our employees in the bargaining unit as described above.

RUSSELL-NEWMAN MANUFACTURING CO., INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 6th Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas 76102 (Tel. No. 335-4211 ext. 2145).

RECEIVED

MAR 7 1967

CLERK OF THE UNITED
STATES COURT OF APPEALS

BRIEF FOR PETITIONER.
INTERNATIONAL LADIES' GARMENT
WORKERS' UNION

In the
**United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 20,217 ✓

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 20,415

RUSSELL-NEWMAN MANUFACTURING Co., INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

**ON PETITIONS TO REVIEW AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

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United States Court of Appeals

REILLY PUBLISHING COMPANY — 1710 S. HARWOOD — DALLAS, TEXAS 75201 ~~for the District of Columbia Circuit~~

41 

FILED MAR 7 1967

Nathan J. Paulson
CLERK

STATEMENT OF THE ISSUES PRESENTED

1. The issue in No. 20,217 is:

Whether the Board erred in failing to order the Company to refrain from refusing to bargain in any other manner, and failing to include in its order the items of relief sought by charging party as specific relief.

2. The issue in No. 20,415 is:

Whether the Board properly certified International Ladies' Garment Workers' Union, AFL-CIO, as the collective bargaining representative of Petitioner's employees.

INDEX

	Page
Jurisdictional Statement	1
Statement of the Case	2
NLRB Election Proceeding	2
Employer Refusal to Bargain	3
The Trial Examiner's Decision	4
The Action of the NLRB	5
Statutes Involved	7
Argument	
I	9
II	9
Conclusion	12

INDEX TO AUTHORITIES

Cases

	Page
Fibreboard Paper Products v. NLRB, 322 F.2d 411	10
Hollywood Ceramics, 140 NLRB 221	6
Russell-Newman Manufacturing Co., Inc., 153 NLRB 1312	3
Shell Oil Co., 149 NLRB 305	10

Other Authorities

National Labor Relations Act, 29 U.S.C. §141 et seq.	
Section 8	7
Section 9	7
Section 10(b)	11
Section 10(f)	2

In the
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**ON PETITIONS TO REVIEW AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

**BRIEF FOR PETITIONER
INTERNATIONAL LADIES' GARMENT
WORKERS' UNION**

JURISDICTIONAL STATEMENT

The petitioner in No. 20,217 is a labor union and was the charging party before the National Labor Relations Board. The union seeks review of the

unfavorable portion of the NLRB Decision and Order and is an aggrieved party under Section 10(f) of the National Labor Relations Act, 29 U.S.C. §160(f).

In No. 20,415, Russell-Newman, the respondent before the Board, seeks review of the order entered against it by the NLRB. Russell-Newman's petition was transferred here by the Fifth Circuit Court of Appeals. By earlier orders this Court consolidated the two petitions for briefing and argument, denied Russell-Newman's motions to transfer and/or dismiss union's petition for review, and granted union intervention in No. 20,415.

This Court has jurisdiction under Section 10(f) of the National Labor Relations Act.

STATEMENT OF THE CASE

We are principally concerned with the validity of an NLRB representation proceeding. The respondent-employer refused to recognize or bargain with the union following its certification by the Board as bargaining representative of the employees at respondent's Denton, Texas, sewing plant. The union filed refusal to bargain charges with the NLRB which resulted in the Board order to bargain under review here.

NLRB Election Proceeding

On December 7, 1964, the Board affirmed a Re-

gional Director's Order for an election among the production and maintenance employees in Russell-Newman's Denton, Texas plant. The January election which followed was won by the union 108 to 75. The employer objected to the election, alleging that certain union campaign material contained gross misrepresentations of fact that tainted the outcome of the election. In keeping with the Board's Rules and Regulations, the Regional Director investigated the objections and concluded there was no interference, overruling the employer's objections and certifying the union as collective bargaining representative. The employer appealed this decision and the Board affirmed the Regional Director.

Employer Refusal to Bargain

On the day following the union election victory, the employer without explanation to the union or the employees posted a "for sale" sign on its Denton sewing plant.¹ The employer also gave a wage increase to its non-union plant in nearby Pilot Point, Texas, an increase which it attempted to justify on the grounds of increased efficiency of the Pilot Point plant.²

Following its certification by the Board, the union wrote to the employer to renew its request for bargaining and to "protest the recurring movement

¹ This action of the employer is the subject of another unfair labor practice proceedings. See *Russell-Newman Manufacturing Co., Inc.*, 153 NLRB, 1312 (1965).

² *Id.* at 1314.

of both equipment, machines, and production work from Denton to your company's other plants," noting that the transfers were "adversely affecting" the employees in the bargaining unit. (G.C.Ex. 13). This same letter requested the opportunity to inspect the production records of the Denton plant because "in the past your company has indicated a reliance upon these records in determining wage increases. . ."

The employer responded to the union's letter renewing its refusal to recognize and advising:

"We are well aware that the reason for these continued letters setting out demands and requests is simply to manufacture evidence for later hearings which may be held." (G.C. Ex. 14).

The Trial Examiner's Decision

The trial examiner concluded, after hearing testimony, that the union campaign "literature was accurate in all important respects" with minor exception. (J.A. 369).² The examiner nevertheless held that the union literature tainted the election. He reasoned that the literature, which touted recent collective bargaining gains by the union, was deliberately misleading because it did not point out that the gains were to be enjoyed over the life of the particular bargaining contracts. Thus, the examiner was offended by a union claim of a 25c per hour

² Respondent took no exception to these findings of the examiner.

increase because the increase, although required by the contract, was in 10c, 10c and 5c increments over a two-year period. (J.A. 370).

On the basis of this reasoning, the examiner recommended dismissal of the refusal to bargain complaint. While recommending dismissal of the complaint, the examiner noted that the relief specifically sought by the union would be appropriate if a bargaining duty existed.⁴

The Action of the NLRB

The Board stated its view of the issue:

"The issue whether Respondent has unlawfully refused to bargain with the Union turns solely on whether the election herein, which resulted in the Board's certification of the Union, should be set aside because of alleged misrepresentations contained in campaign leaflets distributed by the Union." (J. A. 375).

The Board echoed the examiner's findings that the "statements contained in the leaflets were otherwise accurate in all important respects." (J. A. 375).

The Board proceeded to reverse the examiner, concluding that under its long standing rule of

⁴ "The union has urged that a bargaining order issue, and that the order include a specific prohibition against unilateral action and a specific requirement for the production of data. Correspondence in the record establishes that such provisions would be appropriate if the duty to bargain existed." See G.C.Ex. 3-14. (J. A. 371, N. 8).

*Hollywood Ceramics*⁵ that the union campaign handbills did not involve any "substantial departure from the truth." In reaching this conclusion the Board noted the handbills were "literally true" (J.A. 377), and that "at worst [contained] an exaggeration of fact, subject to different interpretations, and as such would not constitute a sufficient basis for setting aside an election." In reaching this conclusion, the Board did note that "characterization of a three-step wage increase in terms of a total package is now a relatively common method of announcing such benefits in newspapers, trade publications, and the like." (J.A. 378).

The Board order required the respondent to bargain upon request, and granted union's request for specific relief to the extent that respondent was required to produce certain of the data sought by the union. (J.A. 382).

The Board order denied union's request for specific relief insofar as the union sought a prohibition against the employer selling its building, transferring production equipment, or transferring lines of production, without prior notice or consultation with the union. The Board also denied union's request for an order requiring the respondent to "restore to the bargaining unit any production work or production equipment that it has transferred from the bargaining unit since January 26, 1965." (J.A. 222).

⁵ *Hollywood Ceramics*, 140 NLRB 221.

STATUTES INVOLVED

Section 8 of the National Labor Relations Act, 29 U.S.C. §158 provides in part:

"Sec. 8(a) It shall be an unfair labor practice for an employer. . .

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)."

Section 9 of the National Labor Relations Act, 29 U.S.C. §159 provides in part as follows:

"Sec. 9(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment;"

SUMMARY OF ARGUMENT

1. The Board order upholding the validity of the representation election was proper and its order directing Russell-Newman to bargain should be enforced.

2. The Board remedy should be expanded to include certain of the items sought by union in its motion for specific relief.

ARGUMENT

I. We recognize that the General Counsel will brief and argue fully the validity of the Board order to bargain; however, we wish to submit our own short argument.

The sole issue is whether the union handbills require voiding the election because, in describing the gains of collective bargaining, they described the gains as an economic package without pointing out that they were to be enjoyed over the lifetime of the particular collective bargaining agreement. It was found by the examiner, and by the Board, that the contracts in question did indeed "provide" the benefits claimed by the union.

It has become commonplace to describe the wage benefits of a collective bargaining contract as a package. See, for example, the statement of Gardner Ackley, Chairman of the President's Council of Economic Advisers, describing the implications of last year's settlement in the steel industry (60 LRR 47, September 20, 1965). Mr. Ackley gave this description of the steel industry settlement:

"There has been so much said that could confuse the casual observer that I want to be very clear about how we regard that settlement. Its elements have been priced out by the parties as adding up to between 47 and 51 or 52 cents an hour. Our pricing of it is closer to the lower end of that range—let's say about 48 cents. One government expert prices it even below 47

cents. I would remind you that the interests of the parties to this settlement may, quite innocently, influence their pricing of the settlement. Judging only by the newspapers, for example, the union apparently held during the negotiations that some elements included in the final package cost appreciably less than they now agree they are worth."

Such commentaries upon the economic package have become customary by union, management, and government spokesmen alike. It is incredible to suggest that a union in describing its economic gains in a similar vein can be held to have intentionally misled employees. Obviously, the gains have been and will be enjoyed by the employees covered by the collective bargaining agreements. The future increases are guaranteed by the agreement and are not speculative. The union described concrete gains of collective bargaining in a customary fashion. This conduct cannot reasonably constitute a misrepresentation requiring the voiding of an otherwise lawful election.

II. Undoubtedly, if the employer had a duty to bargain, the duty included an obligation to negotiate concerning transfers of production equipment and lines of production which might adversely affect the employees in the bargaining unit. Similarly, if the employer contemplated selling its Denton plant it had the same obligation.

Following its election victory the union wrote to the employer on March 23rd, (G.C.Ex. 6), April

12th (G.C.Ex. 12), and finally on May 17th (G.C.Ex. 13), concerning changes in operations that had taken place at the Denton plant which were having adverse impact upon the employees represented by the union. In each instance the union requested information concerning the changes and requested that the practice cease. In each instance the union requests were rejected.

It seems clear that if indeed such changes took place in March, April and May of 1965, following the union's certification that the employer is obligated to restore the status quo by returning the production to the Denton plant, see *Fibreboard Paper Products v. NLRB*, 116 App. D. C. 198, 322 F. 2d 411 (D.C. Cir. 1963), *aff'd* 379 U.S. 203 (1964); see also *Shell Oil Co.*, 149 NLRB 305 (1964). The Board order under consideration makes no requirement that the work be restored to the bargaining unit. If the work has indeed been moved, as claimed by the union, the union will be compelled either to attempt to bargain it back into the unit or file new unfair labor practice charges if the company refuses to restore the status quo. This seems an unduly tortuous process.

Clearly, it is an undue imposition on the bargaining process to require the union to attempt to bargain the work back into the unit if it was unlawfully removed initially. Bargaining should commence on the basis of the status quo before the violation of the Act, i.e. with the bargaining unit

work intact. To do otherwise confronts the union with an insurmountable bargaining burden in an already difficult situation.

New unfair labor practices confront the problem posed by 10(b) of the Act which imposes a six month limitation upon filing of unfair labor practice charges. If in fact the work was transferred at a time when the employer was obligated to bargain with the union, a violation of the Act took place. There is simply no reason to burden the Board's processes further with new charges and further delay the parties, when the remedy is easily available in the present proceeding. Thus, to grant the relief requested by the union, i.e.

"Respondent will restore to the bargaining unit any production work or production equipment that it has transferred from the bargaining unit since January 26, 1965," (J.A. 222)

would impose no hardship upon the employer, and would be in the interest of sound administration of the Act.

Similarly, it would impose no burden upon the employer to require that it

"neither sell nor permit to be sold the building housing its main sewing plant without prior notice to the union and a reasonable opportunity afforded to the union to consult and negotiate concerning its decision to sell, and the effect of such prospective sale upon bargaining unit employees." (J.A. 221).

By adding the two requested provisions the order would be tailored to fit the violations that occurred, or as alleged to have taken place, and would hopefully serve to bring an end to the litigation.

CONCLUSION

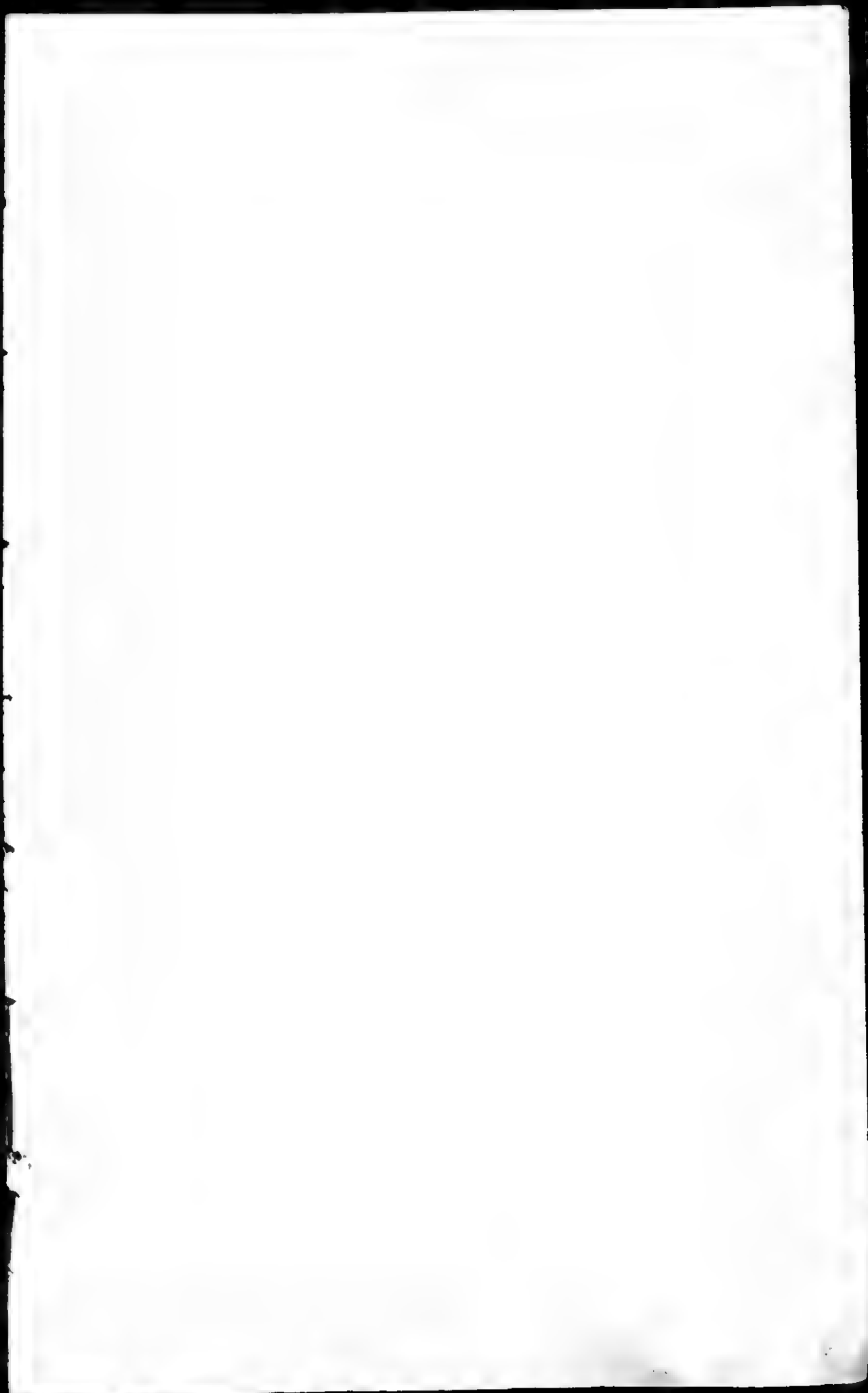
We respectfully submit that the bargaining order should be enforced with the provisions for specific relief sought by the union.

Respectfully submitted,

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1601 National Bankers Life Bldg.
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Workers' Union*



**BRIEF FOR PETITIONER, RUSSELL-
NEWMAN MANUFACTURING CO., INC.**

**In the
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 20,217

**INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, AFL-CIO,**

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NATIONAL LABOR RELATIONS BOARD,

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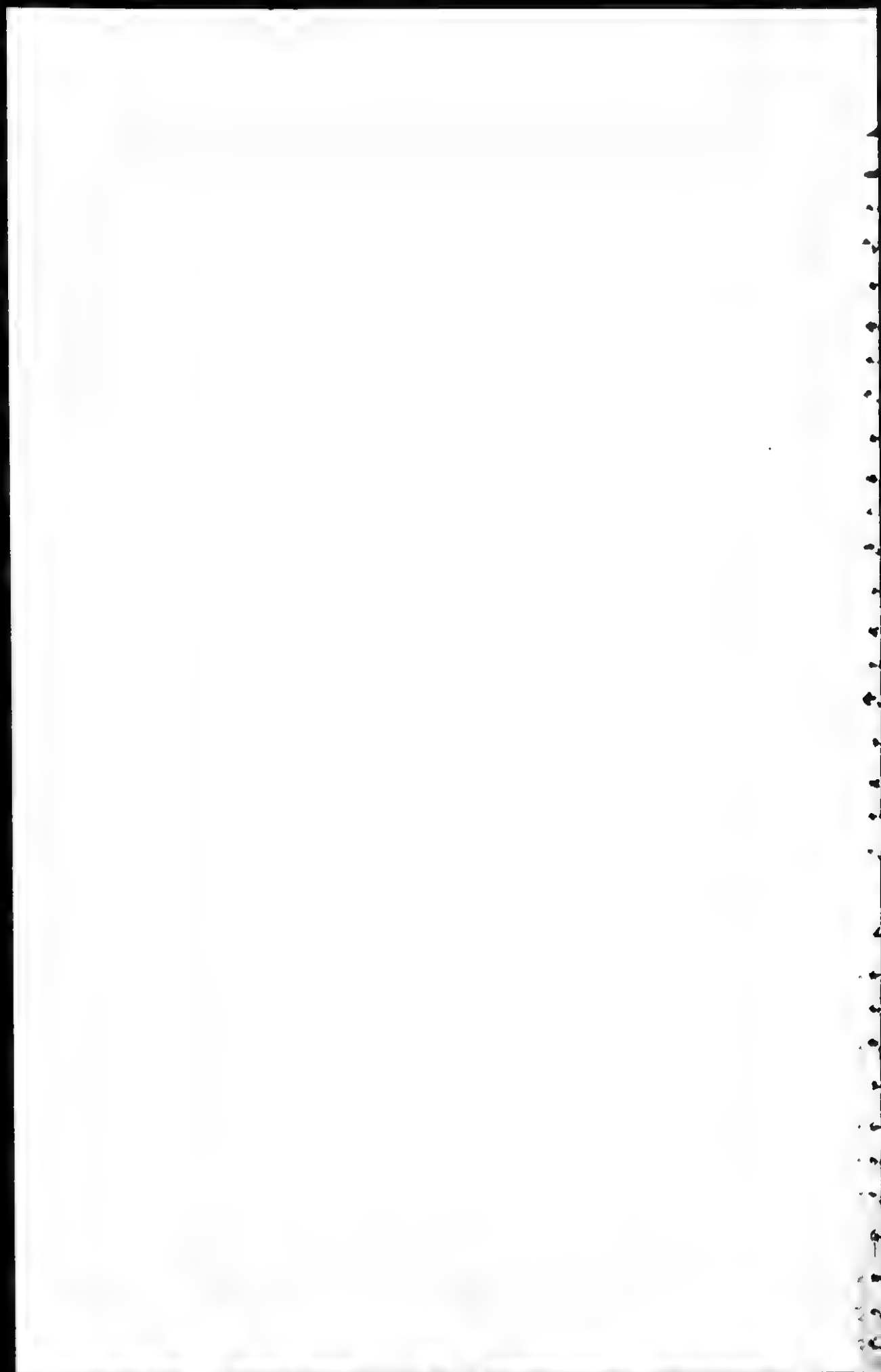
**BRIEF FOR PETITIONER ON
PETITION TO SET ASIDE ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**
United States Court of Appeals
for the District of Columbia Circuit

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FILED MAR 6 1967

Nathan J. Paulson
CLERK



INDEX AND TABLE OF CASES

	Page
Statement of Questions Presented	ii
Jurisdictional Statement	iii
Statement of Case	1
Statutes Involved	13
Statement of Points	15
Summary of Argument	16
Argument	17
Point One	17
Point Two	24
Point Three	27

TABLE OF CASES

Cleveland Trencher Company, 130 NLRB 59, 47 LRRM 1371	23
Hollywood Ceramics Co., 140 NLRB 36, 51 LRRM 1600	22
NLRB v. Bonnie Enterprises, Inc., 341 F. 2d 712	22
Walgreen Company, 140 NLRB 121, 52 LRRM 1193	23

STATEMENT OF QUESTIONS PRESENTED

I.

The question is whether an Order of the National Labor Relations Board requiring a party to bargain with a certified union should be set aside and not enforced where the subject union made material false and misleading statements to the employees immediately prior to the election so that the employer was not afforded time to answer such statements.

II.

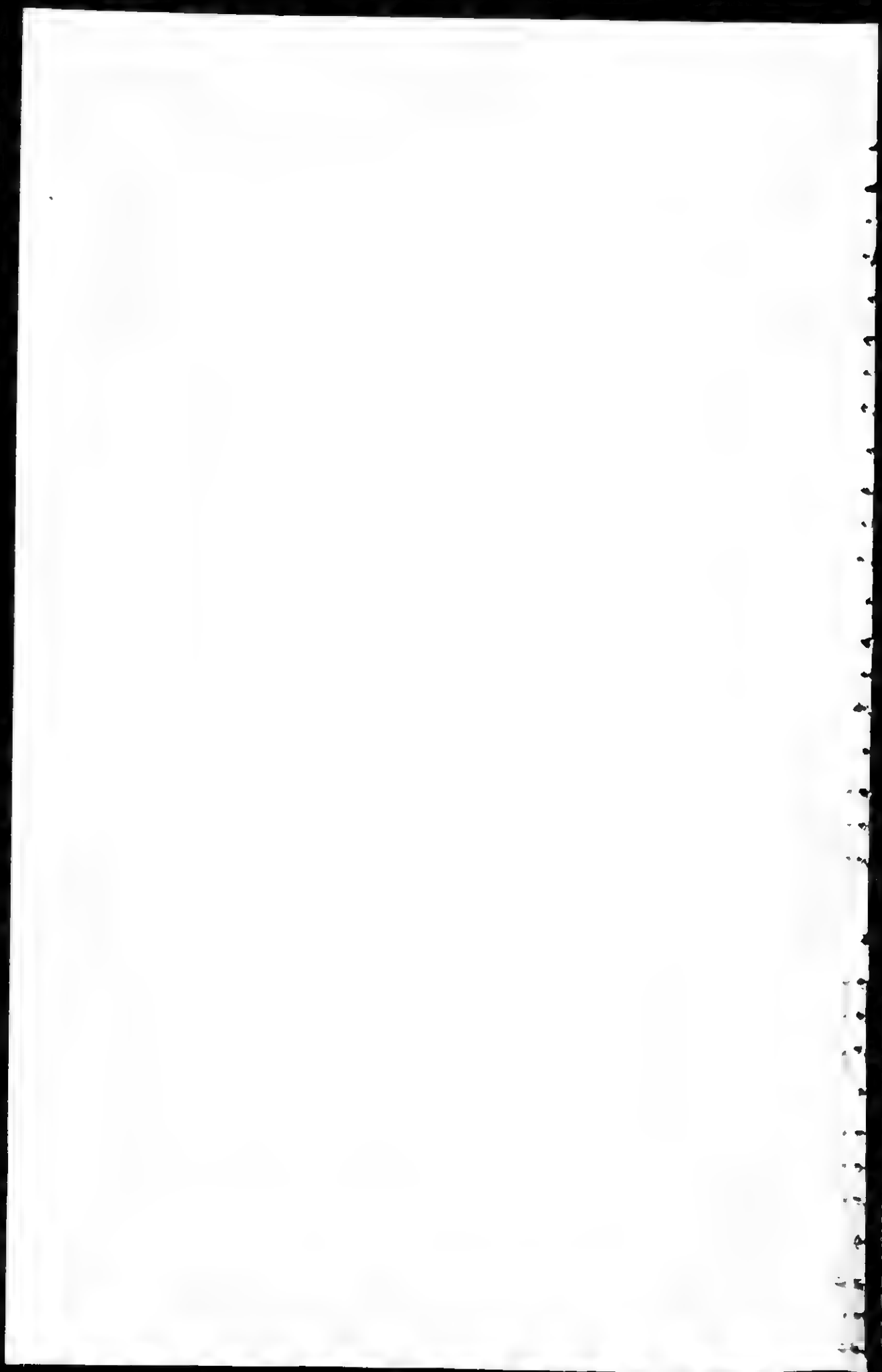
The question is whether an employer was denied due process of law by refusing to it all discovery process and quashing all of its subpoenas where said employer was attempting to prove the false and misleading statements made by the union to its employees concerning contracts the union represented that it had with other employers.

III.

The question is whether this Honorable Court has jurisdiction and/or venue in view of the Statute providing that an action such as this can only be brought involuntarily within the Circuit where the alleged unfair labor practice occurred or where the party resides, and this Petitioner did not voluntarily submit to the jurisdiction of this Honorable Court.

JURISDICTIONAL STATEMENT

The Petitioner Russell-Newman Manufacturing Company, Inc. in Cause No. 20,415 herein contends that this Honorable Court lacks jurisdiction of said matter. Cause No. 20,217 was instituted in this Honorable Court by International Ladies' Garment Workers' Union. Cause No. 20,415 was instituted in the United States Court of Appeals for the Fifth Circuit and was on motion transferred to this Honorable Court and consolidated with Cause No. 20,217. This Petitioner, as hereinafter more fully set forth, contends that the United States Court of Appeals for the Fifth Circuit has exclusive jurisdiction and venue of Cause No. 20,415 pursuant to Section 10(f) of the Labor Management Relations Act of 1947, as amended, Act of June 23, 1947, C. 120, 61 Stat. 136, U.S.C.A. Title 29, §141 et seq. This brief is filed herein subject to said contention on behalf of said Petitioner.



In the
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,217

**INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, AFL-CIO,**

Petitioner,

U.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 20,415

RUSSELL-NEWMAN MANUFACTURING Co., Inc.,

Petitioner,

U.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

STATEMENT OF CASE

The National Labor Relations Board (hereinafter referred to as "Board") by Decision and Order dated June 1, 1966 found Petitioner, Russell-Newman Manufacturing Co., Inc.

(hereinafter referred to as "Russell-Newman") to have violated Section 8(a) (5) of the Labor Management Relations Act of 1957, as amended, Act of June 23, 1947, C 120, 61 Stat. 136, U.S.C.A., Title 29, §141 et seq. (hereinafter referred to as "Act").

The basic facts are as follows: In a Board supervised election on January 26, 1965¹ the International Ladies' Garment Workers' Union, AFL-CIO (hereinafter referred to as "Union") received a majority of the votes cast. Russell-Newman timely filed its "Objections to Conduct Affecting Results of the Election". The Regional Director, following an ex parte investigation, overruled Russell-Newman's objections. Russell-Newman filed with the Board a timely request for review of the Regional Director's decision, which was denied by the Board on March 26. Following certification of the Union as its bargaining representative, Russell-Newman refused to recognize the Union on the ground that its "Objections to Conduct Affecting the Results of the Election" should have been granted. In due order there followed a charge, a complaint and a hearing before a Trial Examiner of the Board. The Trial Examiner in his decision found that Russell-Newman's Objections should have been sustained and dismissed the complaint. The Board in its Decision of June 1 reversed the Trial Examiner and found that Russell-Newman violated Section 8(a) (5) of the Act by refusing to bargain with the Union. The Union filed its "Petition to Review" in this Honorable Court on June 3rd and on June 9th Russell-Newman filed its "Petition to Review and Set Aside the Board's Order" in the United States Court of Ap-

¹ Unless otherwise indicated all dates are in 1965.

peals for the Fifth Circuit. The Fifth Circuit case has, over the objection of Russell-Newman, been transferred to and consolidated with the Union's case in this Honorable Court.

The conduct complained of by Russell-Newman in its Objections concerns representations made by the Union to Russell-Newman's employees immediately prior to the Board supervised election. The representation election was held at Russell-Newman's plant in Denton, Texas on Tuesday, January 26th between the hours of 2:00 P.M. and 4:30 P.M. (J.A. 82)^{1a} On Saturday, January 23rd the Union deposited in the United States mail certain campaign literature, identified as Russell-Newman's Exhibits 1 and 2, duly addressed to the employees of Russell-Newman in the designated bargaining unit. (J.A. 81) A substantial number of the said employees in the unit did not receive this union literature until after 2:00 P.M. on Monday, January 25, 1965. (J.A. p. 81) On Tuesday morning, January 26, 1965, the day of the election, the Union handed out another piece of union campaign literature at the plant entrance, such literature being identified as Russell-Newman's Exhibit 3. (J.A. p. 81) The representations made in these documents were incorrect, false and misleading. Russell-Newman had no time before the election to discover the incorrectness and falsity of the documents and call the same to its employees attention.

Respondents Exhibit 1 and Page 1 of Respondent's Exhibit 3, containing the majority of the false representations,

^{1a} J.A. shall hereafter designate all references to the Joint Appendix.

are attached as Appendix "A" and "B" respectively to this Brief. Said Exhibits make certain representations of fact to Russell-Newman's employees concerning various contracts that the Union allegedly had with companies other than Russell-Newman and, in one case, the status of bargaining which existed at that time between the union and a company other than Russell-Newman. The evidence adduced at the hearing show that such representations were substantially false and misleading. As an example Russell-Newman's Exhibit 2 dated January 25th stated "*TAKE A GOOD LOOK * * * IN DALLAS*—at the start of talks for a new Union Contract the Nardis Company has already offered the Union a *15¢ an hour raise* in minimum wages, more *Holiday Pay*; and the Company is looking favorably on granting 2 weeks paid vacation for anyone who has worked two years or longer." This entire statement was false. The undisputed evidence (J.A. p. 88) of the Nardis production manager (J.A. p. 82) shows:

"Q. At any time prior to January 26th had the Company offered the union a fifteen cent an hour raise in minimum wages? A. No. Q. At any time prior to January—now, at any time prior to January 26, 1965 had the company offered the union more holiday pay? A. No. * * * Q. Now, then, at any time prior to January 26, 1965 did the company offer to the union—beg your pardon, look favorably and I have an overt manifestation there, did they indicate by words or manner—did you indicate that the company favored granting two weeks paid vacations to anyone who had worked two years or longer? A. No, we had not." (J.A. pp. 88-89)

The offer as of January 26th (the date of Russell-Newman's Exhibit 2) on wage increase, not an increase in minimum (J.A. 88) amounted to 13¢ per hour spread over three years, i.e. 5¢ the first year, 4¢ each for the second and third years. (Russell-Newman's Exhibit 5) This was well known to Vickers who was present at the Nardis negotiations. (J.A. 86) Mr. Vickers, the union representative (J.A. 91) conceded the correctness of the testimony of Nardis' production manager as follows:

"Q. Is your recollection of the events as testified by him (Nardis' production manager) differ in any material respects? A. They don't differ with him."
 * * * Q. With that exception (offer and counter-offer on vacation) is your recollection of the events substantially the same as that of Mr. Friedman? A. Yes, sir." (J.A. p. 92)

The other representations made by the union in the literature distributed to Russell-Newman's employees, immediately before the election, were equally false and misleading. The schedule below illustrates the variance between representation and fact. The Union's representations appear in the left-hand column and the factual impeachment thereof appears in the right column.

Nardis' Sportswear, Inc., Dallas, Texas

What Union Represented:	What Evidence Showed:
"At the start of talks for a new union contract" the Nardis Company had "already offered the union a 15 cent per hour raise in minimum wages." (Russell-Newman's Ex. 2)	Nardis had, as of January 26th, ² offered only a 7½ cent per hour raise in the minimum wages; and an overall increase across the board in the adder of 5 cents the first year and 4 cents in the second and

²The date of the Russell-Newman election.

"At the start of talks for a new union contract" the Nardis Company had offered the union "more holiday pay". (Russell-Newman's Ex. 2)

"At the start of talks for a new union contract" the Nardis Company was "looking favorably on granting two weeks paid vacation for anyone who had worked for two years or longer." (Russell-Newman's Ex. 2)

third years each of the contract for a total of 13 cents per hour. (J.A. pp. 86, 88) *The company never offered the union 15 cents per hour raise in minimum wages. (J.A. p. 88)*

It was agreed by both Nardis and the union that the subject of holidays would be passed over until later negotiations. (J.A. pp. 88, 137, 138) *Nardis had not offered more holiday pay prior to January 26th. (J.A. pp. 137, 138)*

As of January 26th, the company had counter-offered a one-week vacation after one year and two weeks after five years, with three weeks after twenty years. (J.A. p. 86)

In meetings of January 21st and 22nd, Nardis and the Union agreed to pass over the subject of vacations until later negotiations. (J.A. pp. 88, 89) *The Nardis Company did not "look favorable" nor indicate by words or manners that the company favored granting two weeks paid vacation for those who had worked two years or longer. (J.A. pp. 88-89) John Vickers who signed Russell-Newman's Exhibit 1, which included with it Rus-*

sell-Newman's Exhibit 2, was present and participated in the negotiations with the Nardis Company, (J.A. pp. 84 and 86) and thus knew that the said representations to Russell-Newman employees were false.

Laredo Manufacturing Co., Inc. and Amedee Frocks'

What Union Represented:

"New union contracts were signed providing every union member (over 300) with a 25 cent an hour wage increase at Amedee Frocks and Laredo Mfg. Co." (Russell-Newman's Ex. 2)

What Evidence Showed:

Under expired contract, the workers received a minimum wage of \$1.30 per hour at the time of expiration. (Russell-Newman's Ex. 6; (J.A. p. 67)'

Under the new contract, the minimum is cut to \$1.25 per hour for beginners and a maximum of \$1.50 to September 6, 1965, when the maximum is raised to \$1.50 per hour for operators. (Russell-Newman's Ex. 7; (J.A. p. 85)'

'The terms of the Amedee Frocks agreement and the Laredo Manufacturing agreement are identical. (J.A. p. 97)

'The expired contract provides for a minimum wage of \$1.15 per hour effective on January 1, 1962, plus an increase of 10 cents per hour on the effective date of a raise in the federal minimum wage (September 3, 1963) plus a 5 cent increase six months thereafter or on March 3, 1964. (Russell-Newman's Ex. 6; (J.A. p. 67, Sec. 2)

'John Vickers attempted to explain this misrepresentation by testifying to an oral understanding with the company to pay an additional 10 cents per hour which was never put into effect. (J.A. pp. 106, 109) He also testified that even though the contract provided only 7.14 per cent increase for piece workers, the oral agreement with 13 per cent. (J.A. pp. 101, 102)

"and in Laredo, the union contract provides a 25 cent an hour increase for cutting department employees." (Russell-Newman's Ex. 3)

There is but one cutting supervisor and one apprentice at Laredo Manufacturing Co. (J.A. pp. 109, 110) The one cutter now makes \$1.87½ where he had made \$1.75 or or only a 12½¢ increase. (J.A. pp. 131, 132)

Under the new contract, the work week is reduced from 37½ hours to 35 hours and the raise given to time workers was given to offset such reduction. (Russell-Newman's Ex. 7; (J.A. pp. 85, 86)

Neither Laredo Manufacturing nor Amedee Frocks are competitors of Russell-Newman. (J.A. pp. 105, 99 and 100) Eighty-five to ninety per cent of Laredo employees are on a piecework basis. (J.A. p. 100) No employees at Russell-Newman are on a piecework basis and this was a big issue in the election campaign. (J.A. pp. 150, 152)

Laredo Manufacturing Company, "with the exception of a few people", has not given a 25 cent per hour wage increase. (J.A. p. 101)

Kabro of Houston, Inc.

What Union Represented:

"The new union contract at Kabro, Inc. provides a minimum wage of \$1.60 an

What Evidence Showed:

The "new union contract" at Kabro was not signed until approximately one month

hour and a 25¢ AN HOUR general increase for time workers. The vast majority of the more than 200 workers at Kabro earn far more than \$1.60 an hour." Russell-Newman's Ex. 2)

" * * * the Kabro of Houston plant signed an agreement with the union granting a 25 cent an hour wage increase to the members in the Cutting and Shipping department;" (Russell-Newman's Ex. 3)

prior to this hearing. (Sept. 27th) (J.A. p. 69) (Russell-Newman's Ex. 9) On January 26th, there was no union contract but merely an oral arrangement and *it was this unsigned oral arrangement to which Vickers was referring in Russell-Newman's Ex. 2 and 3.* (J.A. pp. 113-114)*

Kabro of Houston, Inc. is not a competitor of Russell-Newman. (J.A. pp. 119-120) Under the unsigned contract there was a reduction in the work week from 40 to 37½ hours. (J.A. pp. 126, 127) Employees were not to be paid overtime for hours worked over 37½ hours. (J.A. p. 127) *The 25 cent an hour wage increase was spread over a three-year period.* (J.A. p. 126)

Bobbie Brooks

What Union Represented:

"More than 800 Union Members at the Bobbie Brooks Company *now* have a new union contract * * * "

(Russell-Newman's Ex. 2)

What Evidence Showed:

At date of hearing there was no *new* union contract at Bobbie Brooks which could be produced. (J.A. p. 122)

*The record reflects very scant knowledge on the part of Vickers and the attorney for the Charging Party, as concerns the exact terms of this oral arrangement. (J.A. pp. 112-118)

Vickers used a "Justice" Newspaper article (Russell-Newman's Ex. 12) to determine the terms of the new Bobbie Brooks' contract which he put in his pre-election literature. (J.A. pp. 123-124)

"(now have a new Union Contract) which provides a *minimum wage of \$1.73 AN HOUR for operators * * **" (Russell-Newman's Ex. 2)

"WHICH PROVIDES A MINIMUM WAGE * * * \$3.10 AN HOUR FOR CUTTERS: \$2.05 AN HOUR FOR SPREADERS;" (Russell-Newman's Ex. 2)⁸

"MINIMUM WAGE * * * 22 CENT AN HOUR INCREASE for other time workers" (Russell-Newman's Ex. 2)

The \$1.73 per hour was not to be achieved until January 3, 1967. (Russell-Newman's Ex. 12)

Russell-Newman's Exhibit 12, from which Vickers took his information, clearly shows that cutters and spreaders received a *wage increase, not an increase in the minimum wage*. The first half of the article is devoted to wage increases while the second half is devoted to increases in minimum wages.

Time workers, except cutters and spreaders received increased minimums as follows:

	<u>Old Rate</u>	<u>New Rate</u>
Shipper, Receivers trimmers	\$1.50	\$1.60
Examiners	\$1.40	\$1.55
Service bundle workers, after 1 year	\$1.40	\$1.50
Floor, others	\$1.40	\$1.45

⁸ Vickers testified that he could only *assume* these wage rates to be minimums based on what he knew in the past about Bobbie Brooks and from the "Justice" article. He doesn't know if employees are working below these amounts are not. (J.A. pp. 133, 135) At one spot in his testimony. Vickers called these figures "top minimum". (J.A. p. 134)

"IN WEST HELENA AND LEPANTO, ARKANSAS, * * * MINIMUM WAGE OF * * * \$3.10 AN HOUR FOR CUTTERS." (Russell-Newman's Ex. 2)

There are no cutters at Bobbie Brooks in Lepanto, Arkansas. (J.A. p. 125)

A large portion of Bobbie Brooks, Inc. contract deals with piece rates. (Russell-Newman's Ex. 12) Russell-Newman has no piece workers and this was a material issue in the election campaign. (J.A. pp. 150, 152).

Another example of the complete falsity of the union propaganda is the statement in Russell-Newman's Exhibit 2 that:

"In Laredo, Texas—New Union contracts were signed providing every Union member (over 300) with a 25¢ AN HOUR WAGE INCREASE at Amedee Frocks and Laredo Mfg. Co."

The truth appeared in the cross-examination of Mr. Vickers, the union representative:

"Q. How do they (Amedee and Laredo) differ?

"A. Well, Amedee differs in the respect that they have given the twenty-five cent wage increase to everyone. Laredo Manufacturing Company, with the exception of a few people, have not." (J.A. p. 101)

Mr. Vickers further testified with respect to Laredo and Amedee:

"Q. * * * if that contract * * * had been complied with as it is set forth that any wage increase would have a *maximum* of 20 cents rather than 25, isn't it?

"A. *I haven't read the agreement; I wouldn't know.*" (J.A. p. 109) (Emphasis added)

This testimony is by the man who signed Russell-Newman's Exhibit 1 which went along with Russell-Newman's Exhibit 2 to all of Russell-Newman employees. With respect to Bob-

bie Brooks, Vickers represented to Russell-Newman's employees "*In West Helena and Lepanto, Arkansas—More than 800 Union Members at the Bobbie Brooks Company now have a new Union Contract which provides * * * \$3.10 AN HOUR FOR CUTTERS * * **" (Russell-Newman's Ex. 2) but testified "I don't want to mislead you here. There are no cutters in Lepanto to the best of my knowledge." How misleading can you get?

Prior to the hearing before the Trial Examiner Russell-Newman attempted to obtain evidence of the falsity of the Union representations by use of Request for Admissions and Discovery under the Federal Rules of Civil Procedure and by Deposition under the Board's Rules and Regulations. The Trial Examiner and/or the Board denied the use of all of these tools of discovery. Russell-Newman then caused subpoenas duces tecum to be issued for various officers of Kabro, Bobbie Brooks, Laredo Manufacturing Co., Inc. and Amedee Frocks. The Trial Examiner quashed all such subpoenas upon the condition that the Union produce the alleged contracts. Mr. Vickers, the Union representative, testified at the hearing that some of the contracts had been orally modified and other contracts had never been reduced to writing. Russell-Newman again urged that it be allowed to subpoena the respective company officials who had knowledge of the facts, but this request was denied by the Trial Examiner. Russell-Newman was thus denied access to the evidence which, it is believed, would have further shown the falsity of the Union's representations to its employees on the day preceding and the day of the election.

STATUTES INVOLVED

Labor Management Relations Act of 1947, as amended, Act of June 23, 1947, c 120, 61 Stat. 136, U.S.C.A., title 29, §141 et seq.

Section 8(a) (5)

It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).

Section 10 (e)

The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in Section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be

excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in Section 1254 of title 28.

Section 10(f)

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain

a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

STATEMENT OF POINTS

POINT NO. ONE

When material misrepresentations are made just prior to a Representation Election, and timed so that the opposing party does not have time to answer them, the same shall be grounds for refusing to enforce an order to bargain.

POINT NO. TWO

Russell-Newman was denied due process of law by the trial examiner's and/or the Board's refusal to permit pre-hearing discovery and subpoena power, which justifies the reopening of the hearing with the granting of such powers if the present evidence in this case is not sufficient to deny enforcement of the Board's order.

POINT NO. THREE

This Honorable Court does not have jurisdiction nor venue of this matter insofar as it applies to Russell-Newman because Russell-Newman has not voluntarily submitted to the jurisdiction of this Honorable Court.

SUMMARY OF ARGUMENT

The Union handed and mailed out false and misleading information to the employees of Russell-Newman within 24 hours of a Board supervised election. Russell-Newman nor its employees had time to discover nor reply to the false and misleading statements. Where such representations are made under such circumstances the election should be set aside, and if that is not done the Board's order should be set aside and enforcement denied.

Russell-Newman sought through discovery and subpoena to prove the utter falsity of the Union's representations, and was denied discovery and its subpoenas were quashed, thus denying to it due process of law. If the Board's order is not set aside, the matter should be remanded for another hearing wherein Russell-Newman is afforded adequate discovery or subpoena powers.

Russell-Newman instituted this action before the United States Court of Appeals for the Fifth Circuit, and did not consent to its transfer to this Honorable Court. This action should be dismissed for want of jurisdiction because only the Fifth Circuit has jurisdiction of Russell-Newman for review of the Board's Order.

ARGUMENT

POINT NO. ONE—(Restated)

When material misrepresentations are made just prior to a Representation Election, and timed so that the opposing party does not have time to answer them, the same shall be grounds for refusing to enforce an order to bargain.

It is clear from the above itemized evidence that the union made numerous, false material misrepresentations concerning contracts that the union claimed to have with other companies. It is undisputed that the relevant union literature contained totally false statements about the status of contract negotiations between this union and Nardis Sportswear, Inc. of Dallas, Texas. It must be remembered that Nardis Sportswear, Inc., is located just some thirty-five miles from Russell-Newman's plant, and is far closer to Russell-Newman's plant than any other plant or company mentioned by the Union. It is only reasonable to assume, therefore, that the working conditions and benefits which the Union claims to have obtained at a plant in the same geographical proximity have a very great impact upon the minds of pro-

spective voters. These misrepresentations become even more serious since the fact has been established that Mr. John Vickers, the agent for this Union who actually prepared and distributed the literature, actually was participating in the negotiations at the Nardis Company in January of 1965. Therefore, he had firsthand knowledge of the status of the negotiations as of January 26, 1965, but he chose to completely exaggerate the strength of the Union's position and the promises of the company as of that date.

The evidence is also undisputed, as shown by the relevant contracts themselves, concerning the benefits which the Union gained for employees at the Laredo Manufacturing Company and at Amedee Frocks. By a simple examination of the expired contract at Laredo Manufacturing Company and a like examination of the new contract, it can be mathematically calculated that Mr. Vickers' statement that "every union member" received a 25 cent an hour wage increase at both Amedee Frocks and Laredo Manufacturing Company was erroneous. John Vickers, in his testimony at the hearing, fully realizing that he had been caught in a misrepresentation by the contracts themselves, which contracts he had been compelled to produce, attempted to testify his way out of this clear misrepresentation by stating that he had made an oral or side agreement with the New York owners of the Laredo Manufacturing Company for an additional 10 cents per hour. This additional 10 cents per hour was never paid, and Mr. Vickers was still discussing the matter in September of 1965. The Union did not see fit at the same time of claiming these increased benefits at Laredo and Am-

edee Frocks to point out to Russell-Newman's employees that the raise given to time workers at Laredo Manufacturing Company (Russell-Newman has only time workers at its plant) was given specifically to offset a reduced work week from 37½ hours to 35 hours. Nor did the Union see fit to point out to Russell-Newman's employees that 85 to 90 per cent of the Laredo employees are on a piece-work basis. It is undisputed in this record that the issue of piece work for the employees at Russell-Newman's plant was an issue in this campaign. Finally, Vickers freely admitted from the stand that his literature claiming a 25 cent an hour increase for 300 union members at the Laredo Manufacturing Company was erroneous when he made the following statement:

"Well, Amedee differs in the respect that they have given the 25 cent wage increase to everyone. Laredo Manufacturing Company, *with the exception of a few people*, have not. (J.A. p. 101) (Emphasis added)

At this hearing, Vickers, as he did concerning the Laredo and Amedee Frocks agreements, presented testimony that he felt would be completely impossible for the Russell-Newman to contradict, concerning the union contracts with Kabro of Houston. Vickers testified that the Kabro contracts, which contracts he was compelled to produce, were not what he was referring to in his Union literature in question herein, but that the contract he was referring to was an oral contract, as to the terms of which he was very unsure. Yet, in the literature passed out to the Respondent's employees, Vickers is quick to mislead them by stating, "*the new union contract at Kabro, Inc. * * **" (emphasis added). There was no "contract" at Kabro when Vickers made his repre-

sentations. If Vickers' and the Union attorney's testimony is accepted as true, it establishes that there had been negotiations with a prior employer at Kabro, who, before a contract could be finalized, sold his business. (J.A. 113) Just because this prior employer might have put the rates into effect that he agreed upon and just because the successor employer may not have changed these rates during the course of his negotiations with the Union, does not constitute a "contract". It would have been an easy matter for Vickers to have explained this pertinent matter to Russell-Newman's employees at the same time he was claiming such vast benefits. Vickers also again chose to overlook the fact, which fact is established by his own testimony, that under his "unsigned oral agreement" with Kabro, the work week was reduced from 40 to 37½ hours and that the employees were not to be paid overtime for hours worked over 37½ hours. Again, this issue is vitally important to Russell-Newman's employees as it is undisputed that Russell-Newman has consistently, since the Korean War, provided its employees with 40 hours of work a week. (J.A. 151)

Certainly, one of the most gross and misleading representations made by Vickers just prior to the election was to the effect that union cutters and spreaders at Bobbie Brooks, Inc., in Arkansas were receiving a *minimum* of \$3.10 and \$2.05 per hour, respectively. (Russell-Newman's Ex. 2) These are extremely high wages in anybody's mind, and when represented as a "*minimum*", it is certain to impress prospective voters. By reading the Justice Newspaper article (Russell-Newman's Ex. 12) upon which Vickers testi-

fied he relied in arriving at the above figures (J.A. 123), it can be seen that the above figures represented *wage increases* and not increases in the minimum wage. It is submitted that Vickers' intent to mislead can clearly be seen by his statement on this subject contained in Russell-Newman's Exhibit 2. In that statement, Vickers begins by setting out the term minimum wage in capital letters and underlined, and then draws into that one sentence, set off simply by semicolons, the figures of \$3.10 and \$2.05 per hour. Yet, he begins and ends the sentence with the minimum rate of \$1.73 an hour for operators and a 22 cent an hour *increase* for other time workers, which are true reflections of the nature of such figures from the Justice article. In other words, it can clearly be seen that Vickers tried to run the rates of \$3.10 and \$2.05 per hour by Russell-Newman's employees, disguised as *minimum* rates.

Finally, Vickers freely admitted from the stand that even though his literature stated "In West Helena *and* Lepanto, Arkansas" a minimum wage of \$3.10 an hour for cutters have been achieved, there are *no* cutters at Bobbie Brooks in Lepanto, Arkansas. Again, Vickers chose not to tell Russell-Newman's employees, at the same time he was claiming these great benefits for Union members, that a large percentage of Bobbie Brooks' employees are on piece rates, which can be clearly seen from the Justice article upon which Vickers depended.

The Board and the Courts have held on many occasions that material misrepresentations made by either party just

prior to a representation election, and timed so that the opposing party does not have time to answer the same, will be grounds for setting an election aside or for refusing to enforce an order to bargain, which is based upon such an election. The rule was stated by the Board in the Case of *Hollywood Ceramics Co.*, 140 NLRB 36, 51 LRRM 1600, NLRB, 1962 as follows:

"We believe that an election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election."

The United States Court of Appeals for the Fourth Circuit, where in the case of *NLRB v. Bonnie Enterprises, Inc.*, 341 F. 2d 712 (1965) the union falsely represented that certain listed benefits were in all its contracts, stated:

"(1) It is clear that the promises contained in the circular went far beyond the bounds of permissible hyperbole sometimes indulged in during pre-election campaigns for public office. They were substantial misrepresentations of material facts of vital concern to employees voting in the election. In fact, it is difficult to conceive of more important misrepresentations. Furthermore, the timing of the publication afforded no opportunity for the interested parties to either verify the claims or to determine their untruthfulness.

"(2) While we recognize the considerable discretion with which the Board has been entrusted, it is proper to observe that with discretion goes responsibility.

"* * *

"It follows that the enforcement of the order of the Board should be denied because of the impropriety of

this piece of campaign literature which was sufficient to mislead the electorate when counting their votes."

See also *Walgreen Company*, 140 NLRB 121, 52 LRRM 1193, NLRB, 1963 and *Cleveland Trencher Company*, 130 NLRB 59, 47 LRRM 1371, NLRB 1961.

The facts of this case fit squarely within the rules as laid down by the above cited cases and many others. It is undisputed in this case that the union put its literature in the hands of Russell-Newman's employees within 24 hours of the election. Therefore, Russell-Newman had no time whatsoever in which to ascertain the falsity of the statements made and communicate this falsity to its employees. The statements made by the union were on a subject on which the union had full knowledge and neither Russell-Newman nor its employees had any knowledge whatsoever. The statements concerned issues vital in the campaign. The employees were not in a position to evaluate the statements. There can be no question, on the basis of the Union's timing in distributing its literature, that such distribution was willfully calculated to deprive Russell-Newman, and thus its employees, from learning the true facts prior to the election.

The Board in overruling the Trial Examiner confined itself to "the Union's failure to specify that the increases mentioned in the propaganda were spread over the life of the contracts" as being the only misrepresentation made. This does not comport with the evidence. The evidence

without contradiction shows that in addition the union misrepresented (1) the actual existence of contracts by claiming same where they did not exist, (2) the actual amount of pay other employees were getting, (3) the status of negotiations, (4) the offers that had been made to the Union by other employers, (5) actual increases as being increases in minimum wages thus giving the impression that actual wages were far higher than they actually were, (6) in the timing at which increases were to be received, and (7) the actual existence of certain classification of employees. All of these misrepresentations were calculated to mislead the employees, and were made at such a time as to afford no opportunity for Russell-Newman or its employees to determine the falsity of the statements until after the election. It was only after copies of the various contracts were produced at the hearing, under order of the Trial Examiner, that some of the misrepresentations became apparent. It was also, only at the hearing that certain oral modifications of some of the contracts was brought to light.

Because of the gross misrepresentations contained in the Union literature, and because of the timing thereof the Board's Order herein should be denied enforcement.

POINT NO. TWO—(Restated)

Russell-Newman was denied due process of law by the Trial Examiner's and/or the Board's refusal to permit pre-hearing discovery and subpoena power, which justifies the reopening of the hearing with the granting of such powers if the present evidence in this case is not sufficient to deny enforcement of the Board's order.

It is submitted that the evidence which is contained in the record of this case provides sufficient grounds for setting aside the representation election and thus to deny enforcement in this matter. As stated above, this evidence brings this case squarely in point with other Board and Court decisions setting elections aside for misrepresentation.

If, however, it should be ruled that this evidence is not sufficient, then and in that event, Russell-Newman says that it has been denied due process of law under the United States Constitution and under the Administrative Procedure Act, in that it was not allowed to either effectively discover relevant facts which were in the Union's exclusive control, or to subpoena witnesses who could have produced relevant and material evidence in this case. Finally, after having been denied pre-trial discovery, and subpoena power, the Trial Examiner denied Russell-Newman the right to present secondary evidence at the hearing. (J.A. 154)

The seriousness of the Trial Examiner's refusal to allow the Russell-Newman pre-trial discovery and subpoena power can be seen from the testimony of John Vickers. At the hearing Vickers, for the first time, claimed that he had made various oral agreements outside of and in addition to written contracts with various companies. On several occasions throughout this record, Vickers freely admitted that he was having to assume facts or that he had no personal knowledge of certain facts that were highly relevant to this case. He also freely admitted in several places

in this record that the companies involved would have the needed information. (J.A. p. 109) Respondent, therefore, was denied the right to witnesses who could have contradicted Mr. Vickers' testimony on relevant matters and/or could have added highly relevant facts to this record. It is pointed out that the Trial Examiner quashed each and every subpoena of Russell-Newman's on the basis that, if the Union would produce the contracts involved and agree to their introduction into evidence, the contracts would speak for themselves and there would be no need for other witnesses. It is patently clear from this record that this was not the case. The union produced the contracts, but then attempted to substantiate their case by testimony about outside, oral agreements. In the case of Bobbie Brooks, Inc., the union was totally unable to produce the present contract or to present testimony as to its exact terms. The attorney for the union, Mr. David Richards, freely admitted in his testimony that any information he had was hearsay. (J.A. p. 117) Therefore, Russell-Newman was placed in the disadvantageous position of having to cross-examine a hostile witness in an attempt to prove facts to support its case, as the Trial Examiner quashed the subpoenas to witnesses from the various companies involved.

Wherefore, it is the prayer of Russell-Newman that the Decision of the Board herein be set aside and enforcement thereof denied. Alternatively, Russell-Newman prays that this matter be remanded for an additional hearing and Russell-Newman be granted at that time the right of sub-

poena and other discovery procedures in order that it might present further evidence which it was deprived from presenting at the hearing hereof.

For these reasons if the present evidence in the record is not sufficient to set aside the Board's order and deny enforcement thereof, then this hearing should be reopened and Russell-Newman be afforded the opportunity, by some process of law, to obtain the testimony of the parties other than the Union to the contracts from which the Union made its representations.

POINT NO. THREE—(Restated)

This Honorable Court does not have the jurisdiction nor venue of this matter insofar as it applies to Russell-Newman because Russell-Newman has not voluntarily submitted to the jurisdiction of this Honorable Court.

The Act provides only two methods by which an order of the Board can be reviewed by a Court of Appeals. If the Board seeks enforcement of its Order, it must do so in the Circuit where the unfair labor practice occurred or where the offender resides. Section 10(e) of the Act provides in part as follows:

"The Board shall have the power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the

record in the proceedings, as provided in Section 2112 of title 28, United States Code.

Since Russell-Newman resides in the circuit encompassed by the Fifth Circuit the Board could not have initiated this action in this Honorable Court.

A party that is aggrieved by an Order may institute proceedings to set aside the Board's order in either the Circuit wherein he resides or the wherein the unfair labor practice was allegedly committed or in this Honorable Court at his option. Section 10(f) of the Act reads in part as follows:

"Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that an order of the Board be modified or set aside."

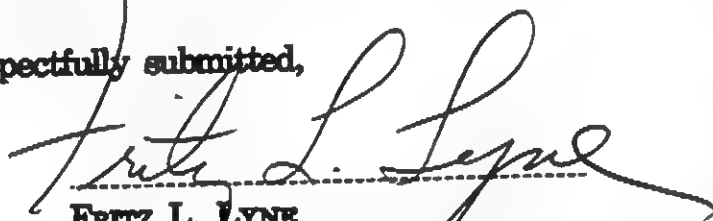
Russell-Newman exercising the right provided it by the Act instituted a proceeding to set aside the Board's Order in the United States Court of Appeals for the Fifth Circuit.

Since Russell-Newman did not voluntarily submit its action to this Honorable Court, this Court acquired no jurisdiction nor venue over Russell-Newman, and the case insofar as it applies to Russell-Newman should be dismissed or transferred to the Fifth Circuit where it was properly instituted.

CONCLUSION

For the reasons herein stated this matter should be dismissed or transferred to the United States Court of Appeals for the Fifth Circuit for want of jurisdiction in this Honorable Court, or in the alternative the Board's Order should be denied enforcement, or in the alternative this matter should be remanded to the Board for further hearing with directions to the Board to make available to Petitioner the necessary process to obtain testimony, other than the Union's, with respect to the contracts that are the subject of this matter.

Respectfully submitted,



Fritz L. Lyne,
*Attorney for Russell Newman,
Manufacturing Co., Inc.,
Petitioner.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner Russell-Newman Manufacturing Co., Inc.'s Brief in the above-captioned case has this day been served by United States mail upon the following counsel at the addresses listed below.

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FRITZ L. LYNE,

*Attorney for Russell-Newman
Manufacturing Co., Inc.*

APPENDIX "A"

ELECTION FINAL January 25, 1965 ELECTION FINAL
 UNION ELECTION CAMPAIGN COMMITTEE,
 ILGWU
 NEWSLETTER

TAKE A GOOD LOOK—at some of the GAINS Union Members have made in ladies' garment shops in the Southwest while you have been waiting for the Government to hold your Union Election.

During the months the Russell-Newman Company was wasting thousands of dollars on high-priced lawyers to delay your Union Election, Union members in ladies garment shops in the Southwest have been going right ahead getting new Union Contracts with higher wages and more benefits—and there have been NO strikes to get these improvements.

YES, TAKE A GOOD LOOK—AT SOME OF THE MANY GOOD THINGS VOTING "YES" FOR THE UNION HAS BROUGHT GARMENT WORKERS IN SOME OF THE UNION SHOPS IN TEXAS, OKLAHOMA AND ARKANSAS—JUST IN THE LAST FEW MONTHS.

- 1/ *In Laredo, Texas*—New Union Contracts were signed providing every Union member (over 300) with a **25¢ AN HOUR WAGE INCREASE** at Amedee Frocks and Laredo Mfg. Co.
- 2/ *In Houston, Texas*—The new Union Contract at Kabro, Inc. provides a minimum wage of \$1.60 AN HOUR and a **25¢ AN HOUR** general increase for time workers. The vast majority of the more than 200 workers at Kabro earn far more than \$1.60 an hour.
- 3/ *In West Helena and Lepanto, Arkansas*—More than 800 Union Members at the Bobbie Brooks Company now have a new Union Contract which provides a **MINIMUM WAGE OF \$1.73 AN HOUR** for operators, **\$3.10 AN HOUR FOR CUTTERS**; **\$2.05 AN**

HOUR FOR SPREADERS; and a 22¢ **AN HOUR INCREASE** for other time workers.

- 4/ *In Bristow, Oklahoma*—On November 1, 1964, Union members at Artemis-Gossard (Remember when three of them visited your shop in Denton last summer?) received another 5¢ an hour increase as provided for in the Union Contract they already had.
- 5/ *And in Dallas*—At the start of talks for a new Union Contract, the Nardis Company has already offered the Union a 15¢ an hour raise in minimum wages, more Holiday Pay; and the Company is looking favorably on granting 2 weeks paid vacation for anyone who has worked two years or longer. (They now have 2 wks. after 5 yrs.)

AND REMEMBER—Union members in these shops already have many other Union benefits—*sick leave pay, hospital and surgical benefits, Union pensions, overtime pay after 7 hours a day and 35 hours a week, severance pay, etc.*—that Russell-Newman workers do not now enjoy.

AND BEST OF ALL—The Union was able to get all these wage increase and added benefits **WITH NO STRIKES IN ANY OF THESE SHOPS.**

JUST COMPARE—These added Union wages and benefits nearly 2,000 Union members have gotten only recently in Union shops in Texas, Oklahoma and Arkansas with what you have—and what you've gotten—at Russell-Newman.

THINK IT OVER

Don't YOU, too, need the Union? IS THERE ANY REASON WHY YOUR "YES" VOTE FOR THE UNION WON'T BENEFIT YOU AS MUCH AS ALL THESE OTHER LADIES' GARMENT WORKERS HAVE BENEFITTED FROM VOTING "YES"?

APPENDIX "B"

TO: Employees of Cutting and Shipping
Department
FROM: Union Election Committee.
SUBJECT: A special VOTE "YES" message.

A survey conducted yesterday afternoon showed that, without question, the Sewing Building employees would vote better than 2 to 1 for the Union.

We know that many of you have signed Union cards and intend to vote "YES" today. Some of you may not yet have decided to Vote "YES".

Yesterday most of you received in the mail a Union "NEWSLETTER" showing wages and wage increases Union Cutting department employees have gotten in the new Union Contract signed last month for 800 members at the Bobbie Brooks Company in nearby Arkansas. We didn't have space in our "NEWSLETTER" to point out that the Kabro of Houston plant signed an agreement with the Union granting a 25¢ an hour wage increase to the members in the Cutting and Shipping department; and in Laredo the Union Contract provides a 25¢ an hour wage increase for Cutting Dept. employees. Shipping Department employees received increases—for example, at the Bobbie Brooks shops these increases amounted to 22¢ an hour. The truth is that you Cutting and Shipping Department employees at Russell-Newman are even more underpaid according to your skills than the operators in the Sewing Building.

YOU HAVE MORE TO GAIN BY GOING UNION
THAN ANYONE ELSE . . . YOUR "YES" VOTE WILL
HELP GIVE THE UNION A BIGGER MAJORITY SO
THE UNION WILL HAVE MORE STRENGTH TO SEE
TO IT THAT FROM NOW ON YOU ARE PAID AC-
CORDING TO THE SKILLED WORK YOU DO.

BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,217

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review an Order of the National Labor
Relations Board

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RUSSELL-NEWMAN MANUFACTURING CO., INC.,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

and

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
AFL-CIO, INTERVENOR

On Petition to Review and Set Aside and on Cross-Petition
to Enforce an Order of the National Labor Relations Board

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Nat'l. J. Paulson
CLERK

STATEMENT OF QUESTIONS PRESENTED

The questions presented, as formulated in the pre-hearing conference stipulation and set forth at pp. 9-10 of the Joint Appendix, are:

1. In No. 20,217, the issue is whether the Board erred in failing to order the Company to refrain from refusing to bargain in any other manner, and failing to include in its order the items of relief sought by the charging party as specific relief.

2. In No. 20,415, the issue is whether the Board properly certified International Ladies' Garment Workers' Union, AFL-CIO, as the collective bargaining representative of petitioner's employees.

III

INDEX

	Page
Statement of questions presented	1
Counterstatement of the case	2
I. The Board's findings of fact and conclusions	3
A. The representation proceeding	3
B. The unfair labor practice proceeding	6
II. The Board's order	8
Summary of argument	9
Argument	10
I. The Company's contention that this Court lacks jurisdiction of No. 20,415 is without merit	10
II. The Board acted reasonably and within its discretion in ruling that the Union's campaign literature did not invalidate the election; accordingly, the Board properly found that the Company violated Section 8(a) (5) by refusing to bargain with the certified union	12
III. The Board's order is reasonable and proper	21
Conclusion	23
Appendix	24

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<i>Anchor Mfg. Co. v. N.L.R.B.</i> , 300 F. 2d 301 (C.A. 5)	21
* <i>Bethlehem Steel Co. v. N.L.R.B.</i> , 74 App. D.C. 52, 120 F. 2d 641	19
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*Cases chiefly relied upon.

IV

Cases—Continued

	Page
<i>Coca-Cola Bottling Co. of Louisville</i> , 150 NLRB 397	15
* <i>Fibreboard Paper Products Corp. v. N.L.R.B.</i> , 379 U.S. 203	21
<i>Follet Corp.</i> , 160 NLRB No. 37	21
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* <i>International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 92, AFL-CIO v. N.L.R.B.</i> , 104 App. D.C. 142, 259 F. 2d 957	9, 11
* <i>International Ladies' Garment Workers' Union v. N.L.R.B.</i> , 96 App. D.C. 272, 225 F. 2d 923	9
* <i>International Woodworkers of America v. N.L.R.B.</i> , 105 App. D.C. 37, 263 F. 2d 483	9, 12, 13
<i>Liberal Market, Inc.</i> , 108 NLRB 1481	14
* <i>Linn v. United Plant Guard Workers of America</i> , 383 U.S. 53	10, 21
* <i>Marshall Field & Co. v. N.L.R.B.</i> , 318 U.S. 253	17
<i>Miner v. Atlass</i> , 363 U.S. 641	18
<i>N.L.R.B. v. Blackstone Mfg. Co.</i> , 123 F. 2d 633 (C.A. 2)	19
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<i>N.L.R.B. v. Globe Wireless, Ltd.</i> , 193 F. 2d 748 (C.A. 9)	18
<i>N.L.R.B. v. International Union of Operating Engineers, Local 66</i> , 357 F. 2d 841 (C.A. 3)	18
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<i>N.L.R.B. v. Seven-Up Bottling Co.</i> , 344 U.S. 344	21

*Cases chiefly relied upon.

Cases—Continued

	Page
<i>N.L.R.B. v. Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, Local 810</i> , 253 F. 2d 832 (C.A. 2)	19-20
* <i>N.L.R.B. v. A. J. Tower Co.</i> , 329 U.S. 324	13
* <i>N.L.R.B. v. Vapor Blast Mfg. Co.</i> , 287 F. 2d 402 (C.A. 7), cert. denied, 368 U.S. 823	18
<i>N.L.R.B. v. Waterman Steamship Corp.</i> , 309 U.S. 206	13
* <i>Olson Rug Co. v. N.L.R.B.</i> , 260 F.2d 255 (C.A. 7)	14, 21
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<i>Raser Tanning Co. v. N.L.R.B.</i> , 276 F. 2d 80 (C.A. 6), cert. denied, 363 U.S. 830	18
<i>Rockwell Mfg. Co., Kearney Div. v. N.L.R.B.</i> , 330 F. 2d 795 (C.A. 7), cert. denied, 379 U.S. 890 ...	13
<i>Russell-Newman Mfg. Co., Inc. v. N.L.R.B.</i> , — F. 2d — (C.A. 5, decided December 27, 1966, 64 LRRM 2092)	22
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<i>Steel Equipment Co.</i> , 140 NLRB 1158	15
<i>United Hatters, Cap and Millinery Workers, Int'l Union, AFL-CIO v. N.L.R.B.</i> , — App. D.C. —, — F. 2d — (No. 20086, decided Feb. 23, 1967, 64 LRRM 2433)	23
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<i>U. S. Gypsum Co.</i> , 130 NLRB 901	15
<i>Universal Camera Corp. v. N.L.R.B.</i> , 340 U.S. 474	8
<i>Walgreen Co.</i> , 140 NLRB 1141	20
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*Cases chiefly relied upon.

VI

Statutes:

	Page
28 U.S.C. 2112(a)	12
National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, <i>et</i> <i>seq.</i>)	2
Section 8(a) (1)	10
Section 8(a) (5)	3, 12
Section 9(d)	2
Section 10(c)	2
Section 10(e)	2, 17
Section 10(f)	2

United States Court of Appeals
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**INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
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and

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**On Petition to Review and Set Aside and on Cross-Petition
to Enforce an Order of the National Labor Relations Board**

**BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD**

(1)

COUNTERSTATEMENT OF THE CASE

No. 20,217 is before the Court on the petition of the International Ladies' Garment Workers' Union, AFL-CIO (herein called the Union), to review and modify an order of the National Labor Relations Board to obtain certain relief which the Union, as charging party, requested and the Board denied (J.A. 381-383, 220-222).¹ The Board's order was issued against Russell-Newman Manufacturing Co., Inc. (herein called the Company), on June 1, 1966, pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*), and is reported at 158 NLRB No. 117 (J.A. 373-383). (The Board's decisions in a representation proceeding (J.A. 15-17, 24-25, 44-48), which, pursuant to Section 9(d) of the Act, forms part of the record in this case, are unreported.) In No. 20,415, the Company has petitioned to set aside the same order.² In its answer to the Company's petition, the Board has requested enforcement of the order. This Court has jurisdiction of the proceeding under Section 10(e) and (f) of the Act.

¹ "J.A." refers to portions of the record printed as a joint appendix to the briefs. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

² By its order of September 22, 1966, this Court consolidated the two cases for the purpose of briefs, joint appendix and hearing.

I. The Board's Findings of Fact and Conclusions

Briefly, the Board found that the Company violated Section 8(a)(5) of the Act by refusing to bargain with the Union, which had been certified by the Board, following the representation proceeding described below, as the exclusive bargaining representative of the Company's employees in an appropriate unit. The following are the facts upon which this finding is based.

A. *The representation proceeding*

On August 7, 1964, the Board's Regional Director issued a decision and direction of election, based on the Union's petition, finding a unit of the Company's production and maintenance employees³ appropriate for bargaining (J.A. 15-17). The Board, on December 7, 1964, after granting review of the unit finding as requested by the Company, issued a decision, affirming the Regional Director's unit determination and remanding the proceeding to him for the purpose of holding an election (J.A. 373; 24-25).

On the day preceding the scheduled election, the employees received by mail a letter and an attached handbill from the Union (J.A. 375, 361; 44-48, 36-39). The handbill, entitled, "Election Final, Union Election Campaign Committee, ILGWU Newsletter," stated as follows:

³ The full description of the unit was (J.A. 360; 15):

"All production and maintenance employees at the Employer's Denton, Texas, plants, excluding designers, office clerical employees, guards, and supervisors as defined in the Act."

Yes, take a *good* look at some of the many good things voting "yes" for the Union has brought garment workers in some of the union shops in Texas, Oklahoma and Arkansas—just in the last few months.

1. *In Laredo, Texas*—New Union Contracts were signed providing every Union member (over 300) with a 25¢ AN HOUR WAGE INCREASE at Amedee Frocks and Laredo Mfg. Co.
2. *In Houston, Texas*—The new Union Contract at Kabro, Inc., provides a minimum wage of \$1.60 AN HOUR and a 25¢ AN HOUR general increase for time workers. The vast majority of the more than 200 workers at Kabro earn far more than \$1.60 an hour.
3. *In West Helena and Lepanto, Arkansas*—More than 800 Union Members at the Bobbie Brooks Company now have a Union Contract which provides a MINIMUM WAGE OF \$1.73 AN HOUR for operators; \$3.10 AN HOUR FOR CUTTERS; \$2.05 AN HOUR FOR SPREADERS; and a 22¢ AN HOUR INCREASE for other time workers.
4. *In Bristow, Oklahoma*—On November 1, 1964, Union members at Artemis-Gossard (Remember when three of them visited your shop in Denton last Summer?) received another 5¢ an hour increase as provided for in the Union Contract they already had.
5. *And in Dallas*—At the start of talks for a Union Contract, the Nardis Company has already offered the Union a 15¢ an hour raise in minimum wages, *more Holiday*

Pay; and the Company is looking favorably on granting 2 weeks paid vacation for anyone who has worked two years or longer. (They now have 2 wks. after 5 yrs.)

On election day, the Union distributed a leaflet to employees (J.A. 375, 361; 44-48, 42) containing the following language:

We didn't have space in our "NEWSLETTER" to point out that the Kabro of Houston plant signed an agreement with the Union granting a 25¢ an hour wage increase to the members in the Cutting and Shipping department; and in Laredo the Union Contract provides a 25¢ an hour wage increase for Cutting Dept. employees.

On January 26, 1965, the election was held and by a majority of 108 to 75, the employees designated the Union as their collective bargaining representative (J.A. 373; 28, 44).

Thereafter, the Company filed timely objections to conduct affecting results of the election, alleging that the Union's literature contained "false and misleading" statements which interfered with the employees' free choice (J.A. 373; 30-35). The Regional Director conducted an administrative investigation, without a hearing, and, on March 3, 1965, issued a supplemental decision and certification of representative, resolving the issues raised by the Company's objections (J.A. 373; 44-48). In his decision, the Regional Director concluded that the Union's pre-election literature did not contain any substantial departure from the truth which would impair the va-

lidity of the election; consequently, he overruled the Company's objections, and certified the Union as the employees' collective bargaining representative.

The Company filed with the Board a timely request to review the Regional Director's supplemental decision. On March 26, 1965, the Board denied the Company's request for review (J.A. 374; 58).

B. *The unfair labor practice proceeding*

On May 6, 1965, the General Counsel issued a complaint alleging, *inter alia*, that since March 10, 1965, the Company had refused to bargain with the Union and had refused to furnish the Union with data relating to proposed changes in the Company's operations (J.A. 374, 359-360; 164-171, 299-304). The Company admitted that it had refused to recognize the Union or to furnish the requested data (J.A. 374, 359-360; 171-176, 299-304). The Company denied the allegations that it thereby violated Section 8(a) (5) and (1) of the Act, however, contending that the Board's certification of the Union was invalid because the unit was inappropriate and the Union's election propaganda contained material misrepresentations of fact which interfered with the employees' freedom of choice (J.A. 374; 171-176). On May 18, 1965, the General Counsel filed a motion for judgment on the pleadings (J.A. 374; 176-182). Thereafter, the Trial Examiner issued an order to show cause, together with an opinion,⁴ in which he took

⁴ In his opinion the Trial Examiner indicated that he would not permit the Company to relitigate the appropriateness of

notice of the absence of a hearing on objections in the representation proceeding, and invited the Company to show "what facts, if any" it was prepared to establish contrary to those set forth in the Regional Director's supplemental decision, in support of its contention that the election should be set aside (J.A. 374, 359; 210-A, 211). Upon the Company's offer of proof, limited to its objections to conduct affecting the election, the Trial Examiner denied the General Counsel's motion, and ordered a hearing (J.A. 374, 359; 268). The Board denied the General Counsel's request for special permission to appeal the Trial Examiner's ruling (J.A. 374-375; 270).

From the evidence adduced at the hearing, the Trial Examiner determined that the Union's "*Newsletter*" and leaflet contained certain inaccuracies which were insufficient to set aside the election (see *infra*, pp. 16-17). He noted, however, that in stating that the Union contracts at Kabro, Bobby Brooks and Nardis provided for specified increases, the Union failed to add that these increases would be paid in three annual installments, and that this omission, in his view, constituted a material misrepresentation (J.A. 370-371). Accordingly, the Trial Examiner found that the Company had no legal obligation to bargain with the Union and recommended dismissal of the complaint (J.A. 371-372).

Upon the basis of the above record, the Board, in disagreement with the Trial Examiner, found that

the unit unless it could show "newly discovered evidence or evidence not theretofore available to it" (J.A. 359, 360-361; 211). The Company does not challenge the unit finding.

the Union's literature contained no inaccuracies or misleading statements warranting the invalidation of the election (J.A. 379).⁵ Accordingly, the Board concluded that the Company violated Section 8(a)(5) and (1) of the Act, by both its refusal to bargain with the Union and its refusal to furnish the Union with data regarding proposed changes in its operations that would affect employees in the unit, and a list of employees in the unit, including their classifications, seniority dates, and rates of pay (J.A. 379).

II. The Board's Order

The Board's order requires the Company to cease and desist from engaging in the unfair labor practices found and in any like or related manner interfering with the efforts of the employees' exclusive representative to bargain collectively on their behalf. Affirmatively, the Board's order directs the Company to bargain with the Union and furnish the requested data upon request, and to post appropriate notices (J.A. 381-382).

⁵ In reversing the Trial Examiner's conclusions regarding the election and the Company's obligation to bargain with the certified Union, the Board disturbed neither his credibility findings nor his findings of fact. The difference between the Board and the Trial Examiner involves conclusions, interpretation, law, and policy. Accordingly, the Trial Examiner's conclusions, to the extent they differ from the Board's, are not entitled to special weight. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 494, 496; *Warehousemen & Mail Order Employees, Local 743 v. N.L.R.B.*, 112 App. D.C. 280, 281, 283, 302 F. 2d 865, 866, 869; *Cheney California Lumber Company v. N.L.R.B.*, 319 F. 2d 375, 377 (C.A. 9).

SUMMARY OF ARGUMENT

I. The Company's renewal of its attack upon this Court's jurisdiction over No. 20,415 violates the pre-hearing stipulation which this Court approved under its Rule 38(k). Accordingly, this Court should reject this contention in accordance with its announced policy in *International Brotherhood of Boilermakers, Iron Ship Builders, Local 92, AFL-CIO v. N.L.R.B.*, 104 App. D.C. 142, 143, 259 F. 2d 957, 958. Aside from its procedural infirmity, the Company's argument ignores the mandates of 28 U.S.C. 2112(a) and Sections 10(e) and (f) of the Act, which compelled this Court to take exclusive jurisdiction of No. 20,415 when the Board filed the record in No. 20,217, the Union's earlier petition to review the same Board order. See *International Ladies' Garment Workers' Union v. N.L.R.B.*, 96 App. D.C. 272, 273, 225 F. 2d 923, 924.

II. The Board acted reasonably and within its discretion in ruling that misstatements in the Union's preelection literature did not invalidate the election. The Union's literature was accurate in all important respects as to the wage increases and fringe benefits it had obtained in contracts with other employers. The Union's neglect to state that the wage increase granted and assured by its contracts would be realized in three annual steps over their respective terms did not constitute a substantial departure from the truth likely to impair the employees' free choice, but was merely a statement in the language commonly used to describe such wage increases. Accordingly,

the Board properly applied its settled policy, approved by the courts, not to set an election aside because of campaign misrepresentations unless it finds it likely that such utterances had a significant impact on the election. *Linn v. United Plant Guard Workers*, 383 U.S. 53, 60-61.

III. The Board did not err in failing to include in its remedial order, specific prohibitions against unilateral action regarding the possible sale of the Company's Denton, Texas, plant, or the transfer of work or plant machinery from that plant to its other plants. (The Union's request for such remedial provisions has no evidentiary basis) Moreover, the Company's unlawful refusal to bargain because it wished to test the Union's certification affords no basis to conclude that the Company will otherwise violate Section 8(a)(5) and (1) of the Act in the future. Thus, the Board's bargaining order provides a remedy appropriate for the unfair labor practices found, and should stand without modification. *N.L.R.B. v. Express Publishing Co.*, 312 U.S. 426, 432; *San Antonio Machine & Supply Corporation v. N.L.R.B.*, 363 F. 2d 633, 643 (C.A. 5).

ARGUMENT

I. The Company's Contention That This Court Lacks Jurisdiction of No. 20,415 Is Without Merit

In its brief (Co. Br. pp. iii, 23, 38-40), the Company renews its contention heretofore rejected by this Court,* that No. 20,415 should be dismissed for lack

* On September 20, 1966, the Company moved this Court to dismiss No. 20,415 for lack of jurisdiction. Thereafter, on

of jurisdiction. By inclusion of this contention in its brief, the Company has improperly expanded the issues embodied in the prehearing stipulation approved by this Court (Prehearing Stipulation and Order) in accordance with its prehearing conference rule, 38(k).⁷ This Court in *International Brotherhood of Boilermakers, Iron Ship Builders, Local 92, AFL-CIO v. N.L.R.B.*, 104 App. D.C. 142, 143, 259 F. 2d 957, 958, declared that "in cases affected by Rule 38 (k), counsel will be strictly limited to the issues made by them with the approval of the court, except in extraordinary cases 'to prevent manifest injustice.' " The Company has not attempted to show any extraordinary circumstances, nor do any appear, which would support an exception to the limitation imposed by Rule 38(k). Accordingly, we urge the Company's violation of Rule 38(k) as ground for rejecting its contention regarding this Court's jurisdiction over Cause No. 20,415.

November 30, 1966, the Court issued an order which, *inter alia*, denied the motion.

⁷ This rule provides: "In any review or enforcement proceeding the court may in its discretion direct the attorneys for the parties to appear before the court or a judge therefor for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice."

Aside from its procedural infirmity, the Company's contention must be rejected as totally without merit. For, it is beyond question that this Court obtained exclusive jurisdiction to decide this case under 28 U.S.C. 2112(a)* and Section 10(e) and (f) of the Act, when the Board filed the record in No. 20,217, the Union's earlier petition to review the same Board order. See *International Ladies' Garment Workers' Union v. N.L.R.B.*, 96 App. D.C. 272, 273, 225 F. 2d 923, 924.

II. The Board Acted Reasonably and Within Its Discretion In Ruling That the Union's Campaign Literature Did Not Invalidate the Election; Accordingly, the Board Properly Found That the Company Violated Section 8(a)(5) by Refusing to Bargain With the Certified Union

It is undisputed, and the evidence establishes, that at all times since the Union's certification, the Company has refused to engage in contract negotiations with the Union, and has admittedly refused to furnish the Union with data concerning proposed changes in its operations and a list of unit employees

* Section 2112(a) provides in pertinent part:

... If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice, such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

(J.A. 374; 171-176, 299-304). If the Board properly certified the Union, the Company's conduct violated Section 8(a)(5) and (1). *International Woodworkers of America v. N.L.R.B.*, 105 App. D.C. 37, 263 F. 2d 483. The Company contends, however, that the Board's bargaining order should be set aside because the Board improperly overruled the Company's objections to conduct affecting the results of the representation election. We show below that the Board's bargaining order should be enforced because the Company has failed to establish that the election was unfairly conducted. *N.L.R.B. v. Mattison Machine Works*, 365 U.S. 123, 124.

Whether a representation election has been conducted under conditions compatible with the exercise of a free choice by the employees, is a matter which Congress has entrusted to the Board's wide discretion. *N.L.R.B. v. A. J. Tower Co.*, 329 U.S. 324, 330; *N.L.R.B. v. Waterman Steamship Corp.*, 309 U.S. 206, 226; *Rockwell Mfg. Co., Kearney Div. v. N.L.R.B.*, 330 F. 2d 795, 796-797 (C.A. 7), cert. denied, 379 U.S. 890. As we now show, the Board's determination that a valid election has been conducted was clearly a proper exercise of discretion.

The Board's rules regarding campaign misrepresentations distinguishes between "a substantial departure from the truth . . . [which] may reasonably be expected to have a significant impact on the election" and, on the other hand, those "ambiguities, like extravagant promises, derogatory statements about the other party, and minor distortions of some facts

[which] frequently occur in communications between persons." *Hollywood Ceramics Company, Inc.*, 140 NLRB 221, 224. With respect to the latter, the Board's policy is to trust the common sense of the electorate to evaluate and fairly discount such utterances.* Indeed, the American voter's exposure to the hyperbole and inaccuracies which characterize our political campaigns has surely imbued the electorate with a healthy skepticism of all campaign propaganda. As the Seventh Circuit has pointed out, "Prattle rather than precision is the dominating characteristic of election publicity." *Olson Rug Co. v. N.L.R.B.*, 260 F. 2d 255, 257.

Where campaign statements are grossly inaccurate or where the facts regarding matters of considerable significance in the campaign are distorted, the Board will, of course, intervene to protect the integrity of

* As the Board declared in *Liberal Market, Inc.*, 108 NLRB 1481, 1482, in declining to set aside an election: "In deciding whether the registration of a free choice is shown to have been unlikely, the Board must recognize that Board elections do not occur in a laboratory where controlled or artificial conditions may be established. We seek to establish ideal conditions insofar as possible, but we appraise the actual facts in the light of realistic standards of human conduct. It follows that elections must be appraised realistically and practically, and should not be judged against theoretically ideal, but nevertheless artificial standards Basically, we feel that the results of a secret ballot, conducted under Government sponsorship and with all the safeguards which have been developed throughout the years, should not be lightly set aside. Like any other contest in which the stakes are high, the losing party is likely to protest the result, but this Board cannot be influenced by any subjective considerations."

its processes.¹⁰ However, in this case, the slight basis for the Company's complaints against the Union's literature justifies the Board's determination. The Union's literature did not, we submit, contain any material representations as to the wage increases and fringe benefits which the Union had secured as the collective bargaining representative of employees at the seven plants named in the literature.

As the Board noted, examination of the Union's literature shows that the voters were unlikely to be misled by the Union's neglect to state that the described wage increases would be realized in three annual steps, and that the Union did not intend to mislead them (J.A. 378). As the Board further observed, the Union's literature did not declare that the Kabro, Bobbie Brooks, or Nardis wage increases were fully effective immediately. On the contrary, the "Newsletter" in reporting the wage increases for Kabro's and Bobbie Brooks' employees, declared accurately in each instance that the contract "provides for" the increase. Further, by its clear reference to the wage increase "offered" at the contract negotiations then in progress with Nardis, the Union demonstrated that it was calling attention to a contemplated increase to be included in the pending contract.

¹⁰ For cases where elections have been set aside by the Board for substantial campaign misrepresentations by either an employer or a union, see *Coca-Cola Bottling Company of Louisville*, 150 NLRB 397, 399-400; *Grede Foundries, Inc.*, 153 NLRB 984; *Hollywood Ceramics, supra*; *Steel Equipment Co.*, 140 NLRB 1158; *U.S. Gypsum Co.*, 130 NLRB 901; *Cleveland Trencher Co.*, 130 NLRB 600, 602-603.

Finally, as the Board concluded, the Union's neglect to clarify its statement of wage increases in its literature by adding "over a three-year" period did not constitute a substantial departure from the truth, but rather a use of the language which newspapers and other publications commonly employ in reporting multi-step wage increases where, as here, such increases have been granted as "a package" and are assured under a contract.¹¹ Accordingly, under its policy as stated in *Hollywood Ceramics*, the Board properly refused to invalidate the election in the face of what "at worst, was an exaggeration of fact, subject to different interpretations" (J.A. 378).

The Board's determination that the remaining inaccuracies were not material is clearly correct. Thus, the report in the Union's literature that the Nardis Company had "already offered . . . a 15¢ an hour raise in minimum wage" (*supra*, at p. 14), overstated the wage offer by 2¢ and, contrary to the Union's representation, the Nardis Company had not offered "more Holiday Pay" at the inception of contract negotiations (J.A. 376 n. 2, 368-369; 86-89, 92, 138-139). The Union asserted that its contract at Kabro, Inc. covered "members in the Cutting and Shipping Department," while in fact, the contract covered cutting employees, but did not extend to shipping employees (J.A. 376 n. 2, 368; 333-334). The Union asserted that its contract with Laredo Manufacturing Co. provided a 25-cent hourly wage increase for cutting-department employees, while the

¹¹ See Appendix *infra*, at pp. 24-25.

increase, which was to be paid in early September 1965, approximately eight months after the challenged representation election, was contained in an oral promise and, as of September 27, 1965, had not materialized for all cutting-department employees (J.A. 376 n. 2, 369; 100-110, 130-131). Finally, the Union's assertions regarding its contract with Bobbie Brooks was inaccurate only to the extent that it referred to the provision of wage increase for cutters at the firm's West Helena and Lepanto, Arkansas, plants—when there were no cutters at Lepanto—and failed to state that the minimum wages which it announced for spreaders and cutters applied only after two months' employment (J.A. 376, 369; 125-126, 131-132, 134-135, 49, 340-341).

The Company now contends that it could have established additional instances of misrepresentation in the Union's literature, but for the Trial Examiner's refusal to permit pretrial discovery and revocation of subpoenas issued by the Board upon the Company's application. However, as the Company filed no exceptions to the Trial Examiner's rulings in these respects, Section 10(e) of the Act¹² precludes it from attacking them before this Court. *Marshall Field & Co. v. N.L.R.B.*, 318 U.S. 253, 255-256; *Puerto Rico Drydock & Marine Terminals, Inc. v.*

¹² In pertinent part, Section 10(e) of the Act provides:

No objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

N.L.R.B., 109 App. D.C. 78, 81-82, 284 F. 2d 212, 215-216, cert. denied, 364 U.S. 883; *N.L.R.B. v. Local 3, I.B.E.W., AFL-CIO*, 362 F. 2d 232, 234-235 (C.A. 2); *N.L.R.B. v. International Union of Operating Engineers, Local 66*, 357 F. 2d 841, 846, n. 10 (C.A. 3). Moreover, as we show, the Company's contention is unwarranted.

As to the Company's requests for discovery, the Board's procedures make no provision therefor, and the lack of such provision does not constitute denial of due process. *N.L.R.B. v. Vapor Blast Mfg. Company*, 287 F. 2d 402, 407 (C.A. 7), cert. denied, 368 U.S. 823; *N.L.R.B. v. Globe Wireless, Ltd.*, 193 F. 2d 748, 751 (C.A. 9); *Raser Tanning Company v. N.L.R.B.*, 276 F. 2d 80, 83 (C.A. 6), cert. denied, 363 U.S. 830; cf. *Miner v. Atlass*, 363 U.S. 641. As for the Trial Examiner's revocation of subpoenas, the record of the proceedings before the Trial Examiner reveals that prior to the hearing, the Company had obtained subpoenas *duces tecum* directed to Messrs. Klein of Bobbie Brooks, Inc., Bishins of Lily Lynn, Inc. (the owner of Kabro), Ligarde of Amedee Frocks, Inc., and Gonzalez of Laredo Manufacturing Co. (J.A. 367; Resp. Exhs. Nos. 17, 18, 19 and 20). The subpoenas directed each of the named persons to produce at the hearing their company's current and next preceding contract with the Union, and all payroll records for the period covered by the contracts (J.A. 367; 347, 348, 349, 350). Prior to the hearing, each of the subpoenaed individuals filed a petition to revoke (J.A. 367; 271, 280-283, 293, 295-297, 299).

Also, prior to the hearing, the Company and Mr. Ligarde reached an understanding under which he would abandon his motion to revoke upon the Company's agreement not to insist upon Amedee's payroll records (J.A. 367; 292). After the Union agreed to furnish the contracts here in issue, and the Company had indicated by its agreement with Ligarde that the payroll records were unimportant, the Trial Examiner revoked the subpoenas issued to Messrs. Klein, Bishins and Gonzalez (J.A. 367; 299). At the hearing on September 27, 1965, the Company agreed not to press for Ligarde's testimony unless its review of the Amedee contract showed a material difference between that contract and the Union's contract with Ligarde's firm (J.A. 368; 146-150). Further, following the issuance of the Trial Examiner's order revoking subpoenas to Klein, Bishins and Gonzalez, the Company proceeded through the hearing, and made no further request for the issuance of a subpoena. Finally, as the Trial Examiner noted, the facts regarding the validity of the election were "fully developed" at the hearing (J.A. 142). Accordingly, we submit that the Company has not shown any abuse of the broad discretion with which the Trial Examiner was clothed in his conduct of the proceedings before him. *Bethlehem Steel Co. v. N.L.R.B.*, 74 App. D.C. 52, 65, 120 F. 2d 641, 654; *N.L.R.B. v. Phaostron Instrument & Electronic Co.*, 344 F. 2d 855, 858 (C.A. 9); *N.L.R.B. v. Blackstone Manufacturing Co., Inc.*, 123 F. 2d 633-634, 635 (C.A. 2); *N.L.R.B. v. Steel, Metals, Alloys and Hardware*

Fabricators and Warehousemen, Local 810, 253 F. 2d 832, 834 (C.A. 2).

With respect to the inaccuracies found by the Board, the Company contends that the instant case is governed by the Board's decisions setting aside elections in *Walgreen Co.*, 140 NLRB 1141; *The Cleveland Trencher Company*, 130 NLRB 600; and *Hollywood Ceramics, supra*; and by the Fourth Circuit's decision nullifying an election in *N.L.R.B. v. Bonnie Enterprises, Inc.*, 341 F. 2d 713. We submit that the Board's reasonable conclusion that the Union's literature was free of substantial misstatements distinguishes the instant case from the Board cases upon which the Company relies. For in those cases, the Board found substantial misrepresentations which, by their content, and the setting in which they were uttered, impaired the employees' free choice. To the same effect is *Bonnie Enterprises, supra*, where the Fourth Circuit, contrary to the Board, found that a union's misrepresentations as to contract provisions covering life insurance, sick pay, pensions, coffee breaks and time-and-one-half pay periods "were substantial misrepresentations of material facts of vital concern to employees voting in the election" and declared that the Union's election circular impaired the employees' freedom of choice (341 F. 2d at 714-715). Thus, the Company's assertion that the facts of this case "fit squarely" into the fact patterns found in other cases ignores substantial differences in the statements made by the unions and the context in which the statements were made. The question in

this case, as in each case involving election campaign propaganda, is one of degree, dependent upon the precise circumstances found. For that reason, as the Board's experience has shown, no case in which an election was or was not set aside is likely to be squarely in point. However, as we have shown in the instant case, the Board has properly applied its settled policy, approved by the courts, not to set aside an election because of campaign misrepresentations unless it finds it likely that such utterances had a significant impact on the election. *Linn v. United Plant Guard Workers*, 383 U.S. 53, 60-61; *Olson Rug Co. v. N.L.R.B.*, 260 F. 2d 255 (C.A. 7); *Anchor Mfg. Co. v. N.L.R.B.*, 300 F. 2d 301 (C.A. 5); *Hollywood Ceramics Company, Inc., supra*, 140 NLRB at 224; cf. *Follet Corp.*, 160 NLRB No. 37.

III. The Board's Order Is Reasonable and Proper

In No. 20,217, the Union contends that the Board erred in failing to grant the Union's motion for specific relief in the form of specific prohibitions against future unilateral action by the Company regarding the possible sale of its Denton, Texas, plant, or the transfer of work or equipment from that plant to its other plants (J.A. 381-382; 220-240). To succeed in its contention, the Union must establish that omission of such specific provisions constituted an abuse of the Board's broad discretionary power to remedy unfair labor practices. *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203, 216; *N.L.R.B. v. Seven-Up Bottling Co.*, 344 U.S. 344, 346. We submit that a finding of such abuse is unwarranted in this case.

In support of its contention, the Union relies upon the Board's findings of unfair labor practices in a prior case involving the Company (153 NLRB 1312)¹³ and correspondence in the record of the instant case (J.A. 301-304). However, beyond bare assertions in the Union's letters indicating a belief that the Company was moving equipment from its Denton plant to "other plants," there is no evidence in the instant case to establish that the Company contemplates sale of its Denton plant or movement of its machines. Moreover, the complaint in the instant case did not allege such conduct on the Company's part (J.A. 164-171). Further, the Board's decision in the prior Russell-Newman case reveals only that the Company placed a "For Sale" sign on one of the buildings at the Denton plant 5 days after the election in the instant case, and prior to the Union's certification (153 NLRB at 1313-1314). In short, the Union's request for the inclusion of specific prohibitions against unilateral action in the Board's remedy was based upon apprehension born of suspicion.

In the instant case, the Company notified the Union that it would not bargain because it wished to test the Union's certification. However, such refusal affords no basis to conclude that the Company will further violate its obligation to bargain with the Union following enforcement of the Board's bargaining

¹³ Enforcement denied and remanded *sub nom. Russell-Newman Mfg. Co., Inc. v. N.L.R.B.*, — F. 2d — (C.A. 5, No. 22,955, decided December 27, 1966, 64 LRRM 2092).

order. As the Board's bargaining order in the instant case provides a remedy appropriate to the unfair labor practices found, it should stand without modification. *N.L.R.B. v. Express Publishing Co.*, 312 U.S. 426, 432. "Bargaining orders need not specify each individual matter upon which an employer must bargain, particularly where, as here, the threshold question is whether there is an obligation to bargain." *United Insurance Co. v. N.L.R.B.*, — F. 2d — (C.A. 7), Nos. 15,266 and 15,589, decided December 21, 1966, 64 LRRM 2036 2038, n. 3) (dictum). Accord: *United Hatters, Cap and Millinery Workers, International Union, AFL-CIO v. N.L.R.B.*, — App. D.C. —, — F. 2d — (No. 20086, decided February 23, 1967, 64 LRRM 2433).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a decree should issue denying the petitions to review and enforcing the Board's order in full.

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February 1967.

APPENDIX

The following newspaper articles have been extracted to demonstrate the manner in which the press commonly describes wage and fringe benefit provisions in collective bargaining agreements.

N. Y. Times, Friday, May 7, 1965, p. 31, col. 4:

CLOTHING UNION

IN 3-YEAR ACCORD

Potofsky Hails 30¢-an-Hour
Rise in Pay and Benefits

The Amalgamated Clothing Workers of America and the Clothing Manufacturers Association of the United States announced agreement yesterday on a three-year contract.

It will provide 30 cents an hour in improved wages and fringe benefits for 125,000 workers.

* * * *

The agreement provides for a 12½-cent-an-hour wage increase on June 1, plus 5 cents to be applied to improved health and welfare benefits.

On June 1, 1966, 2½ cents an hour more will go toward increasing various fringe benefits. And on June 1, 1967, another 10-cent-an-hour wage increase will be added to workers' pay checks.

* * * *

N. Y. Times, Thursday, July 4, 1963, p. 18, col. 2:

HIGH STEEL WORKERS

WIN HOURLY INCREASE OF
\$1.14

Fifteen hundred structural iron workers—the sure-footed high steel construction men—have won a new contract that will bring them \$1.14 more an hour in wages and benefits in the next three years.